

July 3, 2007



TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Marilyn Praisner, President	Councilmember Michael Knapp, Vice-President
Councilmember Phil Andrews	Councilmember Roger Berliner
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Duchy Trachtenberg	



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1 Council President Praisner,
2 Good morning, ladies and gentlemen. If we could please rise for a moment of silence.

3
4 (Moment of silence)

5
6 Thank you. Announcements -- Agenda and Calendar Changes, Madam Clerk? Crystal?

7
8 Council Clerk,
9 Agenda item 3(N) has been added to the Consent Calendar by addendum. Action on
10 Executive Reg 17-07. The MFP Committee scheduled for July 5th at 7:30 has been
11 cancelled. And the Council has received a petition from residents supporting Leadership
12 for Pedestrian Safety.

13
14 Council President Praisner,
15 Good. Okay. Thank you. The minutes, Madame Clerk.

16
17 Linda Lauer,
18 We have the minutes of May 8th, 11th, 14th, and June 19th for approval.

19
20 Council President Praisner,
21 Is there a motion?

22
23 Councilmember Leventhal,
24 Move approval, Madame President.

25
26 Council President Praisner,
27 Councilmember Leventhal has moved approval. Is there a second? Vice President
28 Knapp. All in favor of approving the minutes? (Show of hands) That's unanimous among
29 those present. Move to the Consent Calendar. Is there a motion?

30
31 Council Vice President Knapp,
32 Move approval. Move approval of the Consent Calendar.

33
34 Council President Praisner,
35 Is there a second? Second, Councilmember Ervin. I would call attention on item 3 (J)
36 that the reappointment of the People's Counsel has a modified date for the length of the
37 appointment in order to respond to councilmember requests that are now being
38 considered by the Office of Legislative Oversight and the Council for a work program
39 item on reviewing the function of the People's Counsel. So in order to have that report
40 and have it relate to this Council's modifications, if any, to the function of the People's
41 Council, the appointment has been modified for one year to provide that latitude.
42 Councilmember Berliner?

43
44 Councilmember Berliner,



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1 Thank you, Council President. If I could, could I speak to that briefly for the benefit of my
2 colleagues?

3 Council President Praisner,
4 Sure. Go right ahead.

5
6 Councilmember Berliner,

7 I appreciate the Council President's willingness to consider this modification, and let me
8 share with my colleagues why I requested the Council President to consider it. I know
9 my colleagues appreciate the significance of this Office -- that it was created by our
10 County Executive when he was on the Council, and it is an important Office. It serves to
11 ensure that our residents have a voice when it comes to the issue of development in a
12 way that seeks to counterbalance the resources the developers have in this process,
13 and lawyers that they are able to employ in this process. And so it was designed to
14 ensure that we have an advocate for our residents in that process. And it was an Office
15 that was important to me during my campaign, in which I said, "I really believe that his
16 office needs to be strengthened." And particularly in the aftermath of Clarksburg, I was
17 asking myself, "Is this Office everything it can be, everything it should be, everything it
18 was meant to be?" So during the campaign, I proposed creating a Division of
19 Community Advocates within the People's Counsel to ensure that we had real
20 advocates on behalf of communities in the process of land use decisions. And it was
21 interesting, because I got a phone call from your former colleague, Steve Silverman,
22 saying, "Roger, did you read the law? That's what the law provides." I said, "Okay. Well,
23 that's interesting," because that wasn't necessarily my experience of how the law was
24 necessarily being implemented; but I certainly took that into account. Then, more
25 recently, I had occasion in which I, with this Council's support, created a task force on
26 in-fill development. And in that process, we thought that we would have legal advisors to
27 community representatives, as well as legal advisors to the builders, so that as we go
28 through this very difficult process of trying to reach consensus, both sides of the
29 equation, if you will, had good legal counsel. And so my staff called the Council. We
30 actually called a private attorney to represent the builders in that process. And then we
31 called the People's Counsel and asked whether or not the People's Counsel would
32 serve in the capacity of being the lawyer for the community. And the response we got
33 from the People's Counsel was that the People's Counsel was not comfortable in that
34 capacity because they perceived his position as being more neutral, being more
35 objective, and didn't want to be in that context perceived as an advocate for the
36 community in this particular context. And while I certainly have great respect for that
37 point of view, it certainly wasn't my understanding of what an Office of People's Counsel
38 was all about. I mean you could not have a more populous term, "People's Counsel." So
39 it raised to me the question of whether or not this Office is, in fact, serving the purpose
40 for which it was designed -- or which I certainly thought it was designed. And in the
41 context of an Office that, to the best of my knowledge, had not been rigorously reviewed
42 in eight years -- certainly not since 2002. It felt like if we could have an OLO report that
43 would analyze the Office, see how it's doing, see if its fulfilling its mission, that that
44 would be an appropriate thing to do prior to extending the term for an additional four



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1 years of the current incumbent who, I must say, there are many people who have said
2 wonderful things about the current incumbent. And I will say that there are those who
3 have been, if you will, less flattering in their judgment – which is true of all of us and true
4 of anybody that holds that kind of position. But it seemed to me that before we did a
5 four-year term, that if we could step back and look at this Office and determine whether
6 its doing its function, have an OLO study that would guide us, that we would be better
7 served. So that was its genesis. I apologize for taking so long to discuss how it got to
8 this point, but I do thank the Council President for her support with respect to this.

9
10 Council President Praisner,
11 Okay. Other items for the Consent Calendar that folks would like to speak to?
12 Councilmember Elrich.

13
14 Councilmember Elrich,
15 I would like to pull the abandonment for the Consent Calendar.

16
17 Council President Praisner,
18 Okay. Councilmember Andrews.

19
20 Councilmember Andrews,
21 Thank you, Madame President. I wanted to comment on item “J” which Councilmember
22 Berliner just commented on and also on item “C” which is the Request for Outside
23 Council.

24
25 Council President Praisner,
26 Okay.

27
28 Councilmember Andrews,
29 I understand where Councilmember Berliner is coming from, but I do think that the
30 People’s Counsel is interpreting the law that established his Office correctly in
31 interpreting it as giving advice rather than serving as a voice for a party before the
32 Agency. So I’m looking at how the law reads; and it says, “Protect the public interest
33 and promote a full and fair presentation of relevant issues, administrative proceedings,
34 and encourage effective participation in the County land use process by providing
35 technical assistance to citizens and citizens’ organizations. So I think he’s interpreting
36 the law as it’s written. I understand there might be a desire to change the way the law is
37 written to create a role that is more as described by Councilmember Berliner. But I do
38 think the People’s Counsel has done a very good job of fulfilling the law as it’s written
39 now, and I want to compliment him for that. I don’t have a problem in the proposal to re-
40 evaluate how we want to structure this Office, but I think that it’s been interpreted
41 faithfully as written. So I would make that comment. Second, on item “C,” I’m very
42 concerned about the trend in increased number of cases of workmen’s compensation.
43 It’s up -- 20% increase in cases in, for example, the second quarter of this fiscal year –
44 actually the second quarter of the calendar year 2007 compared to the second quarter



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1 of the calendar year 2005. It went up from, I think it was 522 cases from April through
2 June of '05 to 612 cases from April through June of '07; and I'd like to find out more
3 about what's driving that. What kinds of trends are we seeing? Because these cases do
4 add up, and that's a significant increase in a two-year period. So if we could ask Terry
5 Fleming as Director of the Division Management to provide us with some trend analysis
6 and any other thoughts he has about what's going on here, I'd appreciate that because I
7 know that many of these workmen' comp cases are in public safety area— police/fire,
8 Corrections, Ride On, Department of Public Works and Transportation tend to be the
9 four agencies that have the largest number. And I'd like to know what kind of trends
10 we're seeing there. Thank you.

11
12 Council President Praisner,
13 Thank you. Councilmember Leventhal.

14
15 Councilmember Leventhal,
16 Just a parliamentary inquiry. What is the status, then, of the amendment to the
17 resolution regarding the People's Counsel?

18
19 Council President Praisner,
20 The amendment is what is in front of us.

21
22 Councilmember Leventhal,
23 That's what's before us.

24
25 Council President Praisner,
26 Right.

27
28 Councilmember Leventhal,
29 So that's what we're introducing –

30
31 Council President Praisner,
32 Right. Yes. I'm sorry, George. Councilmember Floreen.

33
34 Councilmember Floreen,
35 Thank you. I wanted to comment on item "M" to bring your attention to the fact that we
36 are confirming County Executive Leggett's appointee for Deputy Director of the DPWT,
37 Mr. Al Roshdieh. Al has been performing outstanding work for us for some time; and in
38 the past six months, I believe he's been performing outstanding work as Acting Director
39 of two departments: the overall Department of Public Works and Transportation and
40 Division of Fleet Management Services. Of course, his pay has not increased
41 commensurately. But we are grateful to him for his hard work and service on the
42 County's behalf and very pleased that he is now in this leadership position within the
43 Department. Thanks, Al, for doing this.



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1 Council President Praisner,

2 I want to add my congratulations as well to Al. I've had the pleasure of working with him
3 on a variety of issues – not serving on the T&E Committee, but other duties “as
4 assigned.” Right, Al? And I very much appreciate his professionalism and his “can do”
5 attitude. They are both high qualities in my view, and he exemplifies them. As far as
6 County employees are concerned, he is a good role model as well. Let me also
7 comment on the People's Counsel appointment. Since there is this request for the
8 study, as I said, to review the function to see if this Council wants to make a
9 modification, it seemed appropriate to make this adjustment. But I do want to comment
10 as well that I concur completely with Phil Andrews that the job as described now is
11 being carried out, and that that individual advocacy role in a broader sense is not having
12 been here when the position was created and debated when it was actually filled after
13 being created that I think the function right now is performing as the function was
14 designed when established. And if the Council or folks are interested in looking at that
15 function, I think that's appropriate. But I want to be clear that the concepts that
16 Councilmember Berliner is speaking to are not part of what the assumption was at this
17 point in the process. Councilmember Elrich, further on another consent item?

18
19 Councilmember Elrich,

20 I'd like to respond to the Office of the People's Counsel.

21
22 Council President Praisner,
23 Sure.

24
25 Councilmember Elrich,

26 I want to place myself in agreement with both sides of this. (Laughter) My feet are firmly
27 planted on both sides. I agree that the Office was created and has carried on its function
28 as I think as envisioned. I also agree with Roger that I think there needs to be more, and
29 would like to go in that direction. I'd like to add that this isn't solely an issue of what kind
30 of advice legally this Office is able to provide to citizens. I mean, being able to empower
31 citizens is not simply being able to render some legal advice. It's being able to give
32 advice on zoning and advice on, for example, traffic impacts -- those kind of things that
33 citizens would be raising as issues in their complaints. And that's something for which
34 the current Office is not equipped to do. Mr. Klauber may be a lawyer; but I don't think
35 he's a traffic engineer, and I don't think he's a zoning expert. And that's the kind of
36 advice that citizens often come for; and, I think from what I've heard, the kind of – if
37 there is any place where people feel most wanting, it's they can't get direction on those
38 items other than to say, “Go find somebody.” And as the conversation I had about
39 where you find this kind of expertise, there are very few people who are willing to
40 support people's cases when they come forward – in both the planning area and in the
41 traffic engineering area. Because to find oneself on one side of these issues may make
42 it difficult, and this has been not conjecture – this has been said to me – “difficult to find
43 work on the other side.” And so we may need to look at how we provide that kind of
44 support so that people aren't left to hope that somebody's willing to take their case and



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1 willing to risk the fact they may not be able to get work if they take the case too
2 effectively and present the citizens' side too effectively. So I look forward to your
3 discussion about to strengthen this Officer over the next year.

4
5 Council President Praisner,

6 Okay. We have the Consent Calendar in front of us with that modification to item "J" and
7 also item "B" having been pulled. All in favor of the Consent Calendar with those
8 modifications, please indicate. (Show of hands) That is unanimous. Now we'll move to –
9 oh, I want to go back to the one we haven't done. Item "B" needs to be discussed, and
10 so I don't know if Mr. Orlin's here – here he is. And, Mr. Elrich, you raised the question
11 so we'll have – as I understand it, because there were -- as the practice because the
12 T&E Committee's practice is not to review these abandonments if there were no
13 objections and disagreements on the abandonments, this comes directly from
14 submission by the Executive to the Council, and directly to the Council without the
15 benefit of Committee discussion. So, Mr. Elrich, you want to raise questions or you
16 asked – microphone, Marc.

17
18 Councilmember Elrich,
19 Good idea.

20
21 Council President Praisner,
22 Thank you.

23
24 Councilmember Elrich,
25 Roger, you're rubbing off on me.

26
27 Council President Praisner,
28 That's okay. We all forget.

29
30 Councilmember Elrich,
31 So my question's sort of fundamental here. This land is currently green and open. And if
32 we give it to the developer, the developer promises to keep it green and open. And I'm
33 looking at their existing land area and their plans for subdivision work – townhouses –
34 and I can't help but asking whether the County open space will become the developer's
35 open space for their project – in which case the County gains nothing. And if in fact this
36 allows more density on the site because the open space is provided here, then in fact
37 we've created economic value. And if we're creating economic value, the ability to
38 develop more lots on this site than would be developed were the open space required
39 provided on this site, I think the County should retrieve economic value. So if Park and
40 Planning determines they don't want this for a park of their own and if the County
41 seriously doesn't want to make any effort to extend this street – and I notice that no
42 other adjoining property owners seem to be getting a bite of the apple, it's all going to
43 one property owner – I have no objection to the County negotiating with the party and
44 establishing a value for the land based on how many additional units they would get or



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1 additional value it brings to the property in selling it to the. But it seems to me if it has
2 value, the County ought to retrieve value for it.

3
4 Glenn Orlin,
5 I'm going ask Mike Cassidy of DPWT who handles this case to talk about the specifics
6 of this. But typically what abandonments do is they abandon rights-of-way where the
7 County has a right to be on it to build a road or something like that, but that the County
8 in fact does not own the underlying fee. And so it's not really our property to turn into a
9 park or something else.

10
11 Councilmember Elrich,
12 Whose land is this?

13 Glenn Orlin,
14 Well, Mike, why don't --

15
16 Mike Cassedy,
17 The underlying fee is -- it belongs to the applicant. They own property on both sides
18 adjoining these rights-of-way -- there are three of them.

19
20 Glenn Orlin,
21 But the County has the right, when the land was dedicated, to build a road or sidewalk
22 and other facilities like that on what is County property -- on private property.

23
24 Council President Praisner,
25 But that's an easement; it's not an ownership abandonment.

26
27 Glenn Orlin,
28 That's right. Well, essentially I'm not sure if "easement" is the right term; but we're
29 abandoning the right to put a public road improvement there. And that's why the law
30 talks about how there's a couple of tests which have to be met to be able to allow the
31 County to go ahead -- and abandonment, which is the right-of-way, is no longer
32 necessary for present public use or anticipated public use in the foreseeable future. And
33 by the "right-of-way," we're talking about the land that's hatched on Circle -- well,
34 actually, both on Circle 4 and Circle 7 -- it's the same map, I think. That's what we're
35 really talking about here. Or that the abandonment or closing is necessary to protect the
36 health, safety, and welfare of the residents of the neighborhood. I think it's really more
37 the first than the second in this particular case. This is actually a garden-variety
38 abandonment.

39
40 Council President Praisner,
41 Well, let me ask a question, if I might -- Marc, if you don't mind.

42
43 Councilmember Elrich,
44 Go ahead.



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1
2 Council President Praisner,
3 On Circle 4, the property owner clearly may own the property along Douglas Avenue
4 and Evans Drive since it abuts that other property and the roadway or the hash mark.
5 But I question whether they own the Gardiner Avenue piece, because the piece there –
6 does the property owner own Parcel 5 and Parcel 16 or 18 – whatever that number is?
7

8 Mike Cassedy,
9 Yes, ma'am.

10
11 Council President Praisner,
12 They've acquired those?
13

14
15 Mike Cassedy,
16 They have them.

17
18 Council President Praisner,
19 Okay. And they own Parcel 6 and 7 as well? Why doesn't the property owner of 6 and 7
20 own some of that Douglas Avenue as well?
21

22 Mike Cassedy,
23 They're just lots that the builder owns that they've never been developed.
24

25 Council President Praisner,
26 Six and seven? I'm sorry – not 6 and 7 -- on the side between Gardiner and Douglas
27 Avenue where the road continues. There is at least, I think, homes on 6 and 7; are there
28 not? Between Gardiner and Douglas Avenue?
29

30 Mike Cassedy,
31 Which 6 and 7?
32

33 Council President Praisner,
34 I'm talking about the 6 and 7 that lie between Douglas and Gardiner.
35

36 Glenn Orlin,
37 This 6 and 7 as opposed to these.
38

39 Mike Cassedy,
40 Right. There's nothing on them, Mrs. Praisner.
41

42 Council President Praisner,
43 There are no houses on there? I thought there were houses on there.
44



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1 Mike Cassedy,
2 No. I'm sorry, I don't have the GIS – Okay.

3
4 Council President Praisner,
5 But are those parcels owned by the same person?

6
7 Mike Cassedy,
8 Yes.

9
10 Council President Praisner,
11 They've acquired all of that property?

12
13 Mike Cassedy,
14 That's correct.

15
16
17 Councilmember Elrich,
18 Five and eighteen?

19
20 Mike Cassedy,
21 All the adjoining property. Yes, sir.

22
23 Council President Praisner,
24 Okay. Does that answer your question –

25
26 Mike Cassedy,
27 They also have the former School of Art and Design on Georgia –

28
29 Council President Praisner,
30 No, I understand that.

31
32 Mike Cassedy,
33 -- where primarily the townhouse development it's going to be. And as was submitted in
34 this case, their desire for the abandonment is primarily to be able to count the
35 undeveloped right-of-way as open space. They can't do that with the public use overlay
36 on it.

37
38 Council President Praisner
39 Yeah, I understand that. That's exactly what I thought Councilmember Elrich was
40 referring to.

41
42 Mike Cassedy,
43 This is a schematic as opposed to a GIS aerial of the development. One's pointing to
44 the townhouses on the School of Art and Design.



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1
2 Council President Praisner,
3 But that's not the existing –

4
5 Mike Cassedy,
6 That's not the existing.

7
8 Council President Praisner,
9 Where's the existing? Do you have that?

10
11 (Speaker with no microphone inaudible.)

12
13 Mike Cassedy,
14 It's a separate subdivision. They did express opinion on this, that they weren't opposed
15 to the abandonment. Their concern was the wooded nature remain, and it is going to.

16
17 Council President Praisner,
18 All right. Councilmember Elrich, further questions on the abandonment then?
19 Councilmember Elrich,
20 I'm not happy about it, but –

21
22 Council President Praisner,
23 Question? Councilmember Berliner.

24
25 Councilmember Berliner,
26 I just want to stay with the same theme because as I appreciate it, what happens as a
27 function of this abandonment is that they get to count the open space which they cannot
28 do now. It is a function of being able – and they own the land on which open space
29 currently exists; but there is a right-of-way which people perceive that will never be
30 used. And that right-of-way prevents them from counting the open space. And if they
31 were able to count the open space, which would be the result of this abandonment,
32 what then happens? What are they allowed to do that they are otherwise not allowed to
33 do as a function of not being able to count it as open space?

34
35 Mike Cassedy,
36 That gets to the Development Plan, and I can't answer that. I know that twenty-seven
37 townhouses are planned, including some MPDU units. Whether or not they got this
38 abandonment – whether that number would have been permitted or not, I don't know
39 the answer. And I think that's what you're asking.

40
41 Councilmember Berliner,
42 I am asking what I understand to be the motivation with respect to this and the
43 consequences that arise from it, so that we –
44



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1 Glenn Orlin,

2 That's typically the motivation for these abandonments, is to increase a setback -- to
3 allow a setback to start at a different place so you can expand an existing house or to in
4 fact allow more development on a property which is already zoned for that. Because,
5 again, where this starts -- in the original subdivision, the underlying ownership belongs
6 to the subdivider, and then that person assigns. The dedication -- it's not a yielding of
7 land fee, it's a dedication -- is the County to build roads. In effect, the developer builds
8 roads usually. But if that dedication no longer is necessary, and that's essentially what
9 the Council would be abandoning, is the notion that it's needed any more, then that
10 disappears.

11
12 Councilmember Elrich,

13 Is this different than the one we rejected last week -- materially?

14
15 Glenn Orlin,

16 Materially? I mean in terms of the location, in terms of the kinds of things that come up,
17 it's really not materially different.

18
19
20
21 Councilmember Elrich,

22 So last week something that would have been split between two home owners, we
23 rejected -- even with the caveat they not be able to benefit from it economically.

24
25 Council President Praisner,

26 Well, I'm not sure you can say with the caveat they aren't going to benefit because
27 assessments will be done on property owned and controlled. And I thought last week
28 the question was also a question of access for the general public still being retained and
29 the County retaining the control of determining where the access would be, how wide it
30 would be. Although there was no discussion of a road, there was of a trail and a path.

31
32 Councilmember Elrich,

33 I guess what I'm saying --

34
35 Council President Praisner,

36 It was as much access and a debate and a difference of opinion within the community.

37
38 Glenn Orlin,

39 The rationales were different, but the effect is the same which is the underlying fee
40 belongs to private owners. The County has a right to put a road through there; and the
41 County would, in that case, abandon the right to do that. And so the property lines are
42 redrawn with the existing property owners, and the same thing is proven here. The lots
43 would have to be redrawn because when the right-of-way was dedicated, there was a
44 right-of-way shown for Douglas Avenue and Evans and for Gardiner. The underlying



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1 ownership of that right-of-way still belongs to the property owner, but they would now --
2 to be able to do this, they would have to go back to the Subdivision Park and Planning
3 to redraw the lot lines.

4
5 Council President Praisner,
6 Councilmember Leventhal.

7
8 Councilmember Leventhal,

9 While I appreciate the scrutiny Mr. Elrich is giving to this, I do think this is significantly
10 different from the abandonment that the T&E Committee recommended rejecting,
11 although I'm glad that Mr. Elrich has polled this so that we can really focus on this --
12 primarily for the reason that one of the first votes I cast here some years back, I now
13 regret a great deal; and it was presented as non-controversial -- although it did come
14 before the T&E Committee -- and that was not a right-of-way abandonment but a road
15 abandonment of Blair, Mill Road, and South Silver Spring. And I've regretted it ever
16 since; I wish I hadn't voted for it. In this case, I think the differences are relatively clear;
17 and so number one, as the packet says -- and this is not a reason not to give it scrutiny;
18 I'm glad we're giving it scrutiny -- no one has objected to this. Whereas in the property
19 off of Burning Tree Road in Bethesda, there was a property owner who was concerned
20 that he would not be able to utilize his property if there were no transportation access,
21 and there was the possibility of pedestrian and bicyclists and others who might want the
22 use the right-of-way even if it were not a road. Here, there isn't -- as far as I can see --
23 any access issues. There doesn't appear to be any particular benefit in terms from
24 having the right-of-way insofar as accessing Georgia Avenue, which would be the major
25 thoroughfare here. And so the issue is: Do you or do you not want to allow the land
26 owner to build, in effect, more units on this residentially-zoned parcel of property? And
27 that's what it comes down to, and either you do or you don't. Unless there is some other
28 policy issue at issue here, I'm missing it.

29
30 Council President Praisner,
31 Councilmember Floreen.

32
33 Councilmember Floreen,

34 Yes. I had a comparable question to Marc's when I looked at this; but what I saw in the
35 packet was that -- and this was an issue with that other proposal -- that there is a
36 provision for a pedestrian/biker connection through this particular piece of property.

37
38 Mike Cassedy,

39 Yes, ma'am. That was discussed by the Planning Board, and it's actually shown on the
40 schematic.

41
42 Councilmember Floreen,
43 And that will be constructed as part of this project.



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1 Mike Cassedy,
2 If that's finally approved. Interestingly, the Home Owners Association, that's the
3 townhouse community just to the north of that, opposes that trail. But whether or not it
4 gets put into the plan –

5
6 Councilmember Floreen,
7 Public Policy objective has been recognized by the players before us so far. Yeah.
8 Okay, because I thought that that was the issue – the usual one. Yeah. We'll leave that
9 to be resolved by whoever has to resolve that, but it won't be us. Okay.

10
11 Council President Praisner,
12 Okay. The abandonment is still before us, absent any other motions. I want to add my
13 thanks as well to Councilmember Elrich for raising the issues. But at this point, I think
14 we're ready to vote on the abandonment. All in favor of the approval of the
15 abandonment, please indicate. (Show of hands) Councilmember Ervin, Floreen,
16 Trachtenberg, Leventhal, Andrews, Berliner, Knapp, and Praisner. Opposed?
17 Councilmember Elrich. Thank you. Okay. We are moving to Legislative Session, Day
18 21. There is no Legislative Journal, I believe; but Vice President Knapp has asked for a
19 point of personal privilege. Thank you, Madame President.

20
21 Council Vice President Knapp,
22 I just want to take this opportunity to request a briefing from our County Attorney as it
23 relates to the status of various Federal Immigration laws. I know that the County
24 Executive, a number of my colleagues, have met with both the County Attorney and met
25 with members of the community. But I think with the Federal Government – or at least
26 the Legislative Branch of the Federal Government -- abdicating any real role as it
27 relates to resolving immigration issues, many responsibilities now fall to local
28 governments to either affirm certain policies or to at least clarify policies for the purpose
29 of their employees. And I think we have a situation now where our police officers are
30 being forced to make certain decisions – somewhat on the fly – and I think that it's up to
31 us to have a better understanding and, if need be, to affirm certain policies so that it
32 clarifies what role our police may have. And so I'd like to see if in the next couple of
33 weeks we could have the County Attorney come over, either in open session or in
34 closed session, to get us the status of his assessment of what our roles and
35 responsibilities may be as it relates to federal laws and requirements.

36
37 Council President Praisner,
38 All right. I'll work with Linda Lauer on that issue.

39
40 Council Vice President Knapp,
41 Okay.

42
43 Council President Praisner,
44 There are several lights – oh, Councilmember Ervin.



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Councilmember Ervin,

My understanding, Councilmember Knapp, is that our police officers are not being asked to make decisions on the fly. I think the issue here is some would like them to be able to make certain decisions on the fly, and our Police Chief and the County Executive have made it very clear that they're not going to do that. So I thank you for asking for the briefing; I think it's much needed. Okay.

Council President Praisner

Other comments? Councilmember Elrich.

Councilmember Elrich,

Yeah. I'd be interested in the briefing, but I really think it ought to be on public session. I don't think there's any reason for it to be closed.

Council President Praisner,

The County Attorney will make that call for us as to the advice to us, but I'll take, I think Councilmember Knapp, wasn't saying which it should be. We'll get the input from the County Attorney. The inclination is to do things in public session, but there may be a piece or something that he requests closed session about. We'll wait and see. Okay. Again, we're back to bills for final reading. Bill 8-07, Capital Improvements Program – Bicycle and Pedestrian Impacts. The Management and Fiscal Policy Committee recommends approval. Chair Trachtenberg.

Councilmember Trachtenberg,

The Committee discussed the Bill which Councilmember Andrews sponsored and which the entire Council has now co-sponsored. (Laughter) Conversation was short. But, again, I want to first of all thank Councilmember Andrews for bringing the Bill forward. Again, from the conversation that we had within the MFP Committee, it's very clear that it's a common-sense approach. It allows us to really have all the information that we need to make decisions around capital investments. So, again, I thank Phil for bringing the Bill forward. And, again, one would see very clearly with the full complement of sponsorship that it is, as I said, a common-sense approach and a win/win for everyone.

Council President Praisner,
Councilmember Andrews.

Councilmember Andrews,

Thank you, Madame President. And thank you, Councilmember Trachtenbeg, for ably steering this through the Committee. I appreciate all my colleagues for co-sponsoring this. I hope this will be the standard operating procedure in the future for any bill I introduce. (Laughter) All right. All right. I'll keep talking. This is a Bill that attempts to address, and I think will make a difference in helping to address a real problem in the County; and that is, the significant problem that we have with pedestrian/bicycle access



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1 and safety to many facilities. Just a few statistics about the problem of
2 pedestrian/bicyclists' safety, and it's reflected in the Police Department's statistics in the
3 past few years. If you look at the number of pedestrian collisions in the last three years:
4 in 2004, we had 420; in 2005, 434; 2006, 429 – a pretty steady amount, but a large
5 number. Bicycle collisions have averaged 90 to 100 each year. So we have over 500
6 collisions each year involving bicycles and pedestrians. We had a total over that three-
7 year period – 2004 through 2006 – of 1,679 pedestrian collisions, 41 of which were
8 fatal. And we had over 300 collisions involving bicyclists. So you have the safety issue,
9 which is significant; and then you have access, which often contributes to the safety
10 problems, but which in and of itself is important because we want to encourage people
11 to bike. We want to make it safe. We don't want it to be difficult to bike around the
12 County. And what this Bill will do is to require that at the very start of the capital process
13 – whenever there's a capital project like a road or a school or a community center – that
14 pedestrian and bicyclist access and safety will be factored in at the very start, not later
15 when it might be impractical to make changes or more expensive. So this will put in law
16 what is currently the practice with our Department of Public Works and Transportation
17 for County capital projects. But it will also require that our Office of Management and
18 Budget require from the School System, from Park and Planning, from the College this
19 kind of information about what kind of considerations have been made for bicycle and
20 pedestrian access and safety in their projects. And then the Office of Management and
21 Budget will transmit this information to the Council when the capital improvements
22 projects come over here. We'll be taking up the Capital Improvements Budget this
23 coming year. And so with the passage of this Bill, which appears very likely, then this
24 will be fully in place for this next round of capital projects that we will consider – any new
25 capital projects, at least, in the coming year. So I want to thank my colleagues for their
26 support. I think this will help institutionalize an important practice by requiring these
27 impact statements for access and safety for pedestrians and bicyclists. And this, I want
28 to note, was the recommendation of the Blue Ribbon Task Force on pedestrian safety
29 that was chaired and that continues to be led by State Delegate Bill Bronrott who's done
30 terrific work in this area. So I want to thank him and the Committee for their
31 recommendations and continuing good work, and thank all my colleagues for their
32 support.

33
34 Council President Praisner,
35 And I believe Councilmember Ervin serves as the Council's representative on the
36 Pedestrian Advisory Committee. We will call the role, Madame Clerk.

37
38 Council Clerk,
39 Ms. Ervin?

40
41 Councilmember Ervin,
42 Yes.

43
44 Council Clerk,



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1 Mr. Elrich?
2
3 Councilmember Elrich,
4 Yes.
5
6 Council Clerk,
7 Ms. Floreen?
8
9 Councilmember Floreen,
10 Yes.
11
12 Council Clerk,
13 Ms. Trachtenberg?
14
15 Councilmember Trachtenberg,
16 Yes.
17
18 Council Clerk,
19 Mr. Leventhal? Yes.
20
21 Council Clerk,
22 Mr. Andrews?
23
24 Councilmember Andrews,
25 Yes.
26
27 Council Clerk,
28 Mr. Berliner?
29
30 Councilmember Berliner,
31 Yes.
32
33 Council Clerk,
34 Mr. Knapp?
35
36 Council Vice President Knapp,
37 Yes.
38
39 Council Clerk,
40 Ms. Praisner?
41
42 Council President Praisner,
43 Yes. The legislation passes 9 to 0. Now move to Bill 7-07, Tenant Displacement – Sale
44 of Rental Housing – Right of First Refusal. This piece of legislation – we’re on a roll – is



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1 also sponsored by all councilmembers. As it turned out, though, as we took a little more
2 conversation than the three minutes in MFP Committee because some issues came to
3 us both in the Public Hearing as Councilmembers will recall and also as our able staff –
4 especially Kathleen Boucher – spent some time looking through the legislation and the
5 history of previous actions on these issues or concerns by the County, we decided to
6 make some modifications within the PHED Committee. The PHED Committee does
7 bring this you this legislation with a unanimous endorsement to enact. There are two
8 amendments within the legislation. To remind councilmembers, the Bill repeals a
9 revision that is in current law that exempts the owners of rental housing built after
10 February 5, 1981, from the Right of First Refusal requirements set out in the County
11 Code. Currently in the County Code, anything built before February 5, 1981, must follow
12 this process. If there is a sale of the property – rental property, again – if there is a sale,
13 the County, the Housing Opportunities Commission, and any tenant organization may
14 exercise the right to buy the rental housing before it is sold to another person. And it is
15 in that order: first County, then Housing Opportunities Commission (HOC), and then a
16 tenant organization. I believe in the packet, at the end of the section that is the narrative
17 on page 6, you'll see the numbers of times that the County, HOC, or a tenant
18 organization has exercised this right dealing with properties constructed prior to
19 February 5th. HOC has purchased six; the County has purchased two; and in the
20 process after purchasing those two, transferred the buildings to HOC. The County
21 purchased two buildings in the city of Takoma Park and transferred those to Victory
22 Housing. And a tenant organization purchased one building. Therefore, there's only
23 been one situation where a tenant organization has exercised that option. I believe it
24 was London Terrace Townhouse homes. The Committee had one correction that it
25 needed to make – just a technical one because the title referred to rental housing built
26 before a certain date rather than after a certain date. The notice in the paper was
27 correct, so there was no error or flaw as far as our consideration. So the only fix that
28 was actually needed was a correction in the title of the legislation. Again, this relates to
29 property built after February 5, 1981. The other issues that we discussed are the issues
30 of – one issue that we dealt with fairly quickly was the issue of mobile home parks.
31 There is one in the County. HOC, during the legislation hearing and testimony, had
32 recommended that we amend it to repeal the language which currently exists in the law
33 to exempt mobile home parks from that Right of First Refusal requirement. The
34 Committee rejected that amendment because it was concerned that we hadn't really
35 notified and hadn't heard from anyone related to the mobile home because the law, as
36 introduced, and the process did not make any reference to it. We also heard from the
37 AOBA and the builders about a couple of issues, one being the whole idea of its impact
38 on rental housing being new construction. And the concern was raised, especially by
39 Mr. Bozzuto, that would have a dampening effect or could damage investor return on
40 brand new construction. As the Committee noted, the Bill makes a change on the date
41 in that we're dealing with the Right of First Refusal on the sale of rental housing. And
42 obviously, given the limited number of times that it's been exercised, the concern was
43 noted; but the Committee, I think, unanimously did not feel that it was going to have as
44 significant an impact as had been noted. The testimony as well from Mr. Bozzuto



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1 included correspondence from JPMorgan Asset Management which recommended that
2 the current 180-day sale completion period be reduced to 60 days – again, to give more
3 certainty. Both HOC and DHCA commented that the current 180-day period they
4 thought was adequate but not excessive. And in the packet, again, on Circles 104 to
5 105, the timetable for what goes on during that 180 days is laid out. And the point that I
6 think was made fairly clearly is that although it is 180 days, the decision about whether
7 the County is going to enter into that or HOC is basically made within the first 60 days.
8 And so the concern about it being a long period of time does not speak to the subsets of
9 those days and the fact that folks, given the limited opportunity it's been used and the
10 timing in those uses, folks did not feel that that should be implemented in that frame –
11 that was a concern from a standpoint of implementation because the County is pretty
12 clear in the first 60 days of the process. The other issue that was raised relates to the
13 whole issue of the tenant organization role. And there were two issues that we talked
14 about: one starting the whole discussion again came from AOBA and their comments
15 about requiring the tenant organization to retain at least 30 percent ownership in the
16 property. And the issue related to their experience, I think, within the District of
17 Columbia where their legislation is significantly different from the County's. And in the
18 past where there have been occasions when tenant organizations have flipped their
19 ownership and therefore, I think, raised some concerns about the seriousness and
20 significance of the intent for a tenant organization to actually exercise it's Right of First
21 Refusal in order to retain the tenant control of the property, that it may be just to
22 generate a different kind of relationship with the property as far as the tenants are
23 concerned. The County believes -- and the County Attorney, as well as our Council
24 attorney in our discussion, indicated that unlike the District of Columbia's Right of First
25 Refusal law – which expressly allows a tenant organization to assign its Right of First
26 Refusal to a third party – the County law is silent on this issue; but even more
27 importantly, the County Attorney's office has consistently maintained that Chapter 53A
28 does not – I repeat, does not give a tenant organization the right to assign its Right of
29 First Refusal. And, in fact, there may be some situations though in the future where a
30 tenant organization might wish to purchase the rental housing for the purpose of
31 converting it into condominiums. And in the process of doing so, if it converted the
32 property to condominiums, by the end of the process they would or could own less than
33 the 30% requirement that would be suggested as part of the legislation and could
34 undermine retaining the affordability of the property – which is, obviously, the overall
35 goal of this legislation. So the Committee agrees with the County Attorney and Council
36 attorney that our law is different, that tenant organizations do not have the right to
37 assign their Right of First Refusal; and, therefore, the concern related to the District law
38 does not apply in Montgomery County. The final conversation that we had is somewhat
39 related to this issue. And it was a request from AOBA that we allow greater discretion to
40 DHCA in approving rent increases within the current law, which would allow a buyer of
41 rental housing to avoid the Right of First Refusal requirement by signing an agreement
42 not to convert the rental housing for at least five years and by agreeing to follow the
43 County's voluntary rent increase guidelines for five years for low or moderate income
44 tenants and three years for all other tenants. In the process of doing so, DHCA does,



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1 within the current law, have the ability to allow a buyer to increase rents above the rent
2 increase if DHCA decides that the rent increase is justified by unforeseen
3 circumstances beyond the buyer's control or by necessary rehabilitation to the rental
4 housing. AOBA asks that the word "renovation" be added to rehabilitation. And the
5 Committee, after some conversation – especially with DHCA who said that they didn't
6 object to the proposal because they felt that they had the ultimate judgment as to what
7 was – and the discretion to approve whatever was being made as modifications to the
8 buildings, and they would likely interpret rehabilitation and renovation to have similar
9 meanings. And we went through some discussions of whether granite counters are
10 rehabilitation, renovation, or whether upgrading bathroom facilities, etc. And I think the
11 Committee in the end was convinced that DHCA employees have the capacity to make
12 judgments between those two and within those two, and that the inclusion of the word
13 "renovation" has no major significant modification to the legislation. The other comment
14 which the Committee did not discuss but is in the packet on page 3, which Council staff
15 is recommending, is that if we pass this Bill today, it would wait for Executive signature
16 and would take effect in 90 days. If we make this Bill an Expedited Bill, it takes effect
17 when it is signed by the County Executive. Council staff is recommending that we
18 change this Bill to an Expedited Bill. And given the number of Council sponsorship, I
19 would check with my colleagues on the Committee; and I would basically recommend
20 that we make this an Expedited Bill. Councilmember Floreen, do you have any
21 objections to making it an Expedited Bill? All right. Then the Committee -- and
22 Councilmember Elrich has indicated he has no objection. So the Committee
23 recommendation would be that it be modified. There are three amendments then: the
24 technical, the addition of the word "renovation," and the change to make this an
25 Expedited Bill. There are two lights. Vice President Knapp.

26
27 Council Vice President Knapp,

28 Thank you, Madame President. I appreciate your explanation of the elements of this. I
29 think you did a good job of laying out all the pieces. I have just a couple comments –
30 both for staff. First – I guess staff and the Committee – as it relates to on page 2
31 number 3, the tenant organization's ownership interest. In reading the packet last night,
32 especially in the Committee recommendation, at the bottom of the first paragraph it talks
33 about "unlike the District of Columbia's Right of First Refusal law which expressly allows
34 a tenant organization to assign its Right of First Refusal to a third party, Chapter 53A is
35 silent on the issue and that the County Attorney has consistently maintained that
36 Chapter 53A does not give a tenant organization the right to assign its Right of First
37 Refusal. I just would like to get some clarification. Just from a belt and suspenders
38 perspective, if we know that there's at least precedent in the region for doing this, our
39 law is currently silent on it, why we wouldn't want to just try to make sure that we've
40 codified it if our current law is silent on the issue, and how the County Attorney has
41 reached the conclusion that it doesn't give that right if we're silent.

42
43 Kathleen Boucher,



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1 Yes. If I could elaborate just a bit on that particular component of the Council staff
2 packet. That amendment, as Council President indicated, was proposed by AOBA; and
3 it was proposed as a simple solution to a clear problem. And the Council staff's concern
4 about that proposed amendment is really threefold. First of all, that I don't think the
5 problem is clear. Secondly, if there is a problem, the proposed solution isn't simple and
6 has some unintended consequences. And then third, which the Committee did discuss
7 a bit, was: Is this bill the vehicle in which you want to be discussing this particular issue?
8 So let me just address the clear-problem issue. It was proposed to solve a problem, the
9 problem being that a tenant organization would literally sell for cash its Right of First
10 Refusal. It happens very frequently in the District of Columbia -- very clear statutory
11 language allowing that to happen. In our history, in terms of all the information we've
12 been given, that has never happened in Montgomery County. There's only one tenant
13 organization who's ever exercised the Right of First Refusal under Chapter 53A. And
14 we've been advised that the County Attorney's Office has always maintained there is no
15 Right of First Refusal for -- no ability to assign your Right of First Refusal. The law is
16 silent. And the question would be if the Council wants to delve into this issue, then the
17 Council staff's recommendation would be, do that thoroughly because the proposed
18 solution -- if you want to change it from silence to something else, the proposed solution
19 was overly simplistic. The proposed solution was, "require a tenant organization to
20 maintain a 30% ownership interest." Okay? Well that, right off the bat, has the
21 unintended consequence that the Council President was indicating -- which is, in
22 essence it will prevent a tenant organization from purchasing rental housing for the
23 purpose of converting it to condominiums -- at least 30 % of the units to condominiums.
24 So it has that unintended effect. And it also gives rise to several other issues. How long
25 does the tenant organization have to maintain that 30% interest? What happens if it
26 doesn't maintain it? What's the enforcement mechanism? What do you do? What are
27 the acceptable forms of ownership? What types of legal forms of ownership do you
28 have? So it gave rise to all those issues. And then you add that up to, Is this Bill the
29 vehicle by which you want to be delving into that?

30
31 Council Vice President Knapp,

32 All right. That's clear. The Mobile Home Parks issue -- item number 4 on page 3 --
33 representing the last remaining mobile home park. I just wanted to get a sense as to
34 how we could potentially address the issue the HOC recommended? I know when the
35 last trailer park sold, which I guess was about four year ago now, that was a big concern
36 -- that it is affordable housing, and it's very legitimate affordable housing. And so we lost
37 a big significant portion of affordable housing when that sale transfer took place, and so
38 to at least have some idea of how we would weigh in if it were to happen.

39
40 Kathleen Boucher,

41 Sure, very easy question and much simpler answer.

42 Council Vice President Knapp,

43 Oh, good.

44



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1 Kathleen Boucher,
2 Another bill could do that very easily. The Committee's concern, as the Council
3 President indicated, was notice. And so a bill that would provide adequate notice would
4 be the right vehicle.

5
6 Council Vice President Knapp,
7 Right. I might be interested in looking at something along those lines. Okay. And then
8 number 6, the Length of Sale Completion Period. I thought that the issue that was
9 raised by Mr. Bozzutto was interesting; but more importantly I guess, one of the things
10 that has continued to strike me in the four years I have served on the Council is we in
11 government tend to make everything take longer than it necessarily has to. We tend to
12 drag lots of things out just because we can. And so our perspective is to make things
13 longer as opposed to try to be responsive and move things as quickly as we possibly
14 can. And so in reading the packet again last night, my concern was why we need so
15 much time to really accomplish this. And I understand that there's the notion that we get
16 a general response back within 60 days; but then we still would retain the 180-day sale
17 completion period. And I just wanted to get some sense from Mr. Nelson as to what,
18 why, how – I mean, why could we not make an assessment within 30 days and get
19 feedback? And my biggest issue is that if someone has decided to sell, there's an actual
20 contract on the table. They're pretty far down the pathway. And for us to take anywhere
21 from two to six months to basically say, "Put everything on hold" – even though I
22 appreciate the intent – I mean, I'm co-sponsor. I think the intent of this legislation is
23 right. I don't see a reason for us to take a long time just because we're government and
24 we can take a long time.

25
26 Rick Nelson,
27 Rick Nelson, Director of Housing and Community Affairs. As I think was explained by
28 HOC, it's not an inordinately long period of time whether the public or the private sector.
29 The private sector takes, frequently, an equal length of time. But in terms of the first 60
30 days, there is a necessity in most of those cases for DHCA or HOC to perform some
31 due diligence in terms of examining the property to determine what kind of rehabilitation
32 is necessary; whether or not the price is in fact affordable and can be supported by the
33 rental schedule; and whether or not the County or HOC wants to exercise that Right of
34 First Refusal. Generally, the answer is arrived at prior to the 60 days; but it depends
35 upon the complexities. We understand the whole issue in terms of not delaying the
36 private sector deal any longer than absolutely necessary. And in the experience that I've
37 had, particularly when I was sitting on the Commission at HOC, I think we were very
38 responsible and responsive in terms of exercising that. The other issue, which is equally
39 related and there was concern expressed by some of the developers, is in the Tier A
40 properties. There was -- again they had a concern expressed in terms of delay.

41
42 Council Vice President Knapp,
43 "Tier A" being defined as –
44 Rick Nelson,



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1 Tier A being the really upscale properties that are very expensive. Those are the ones
2 that are fairly easy for DHCA and HOC to make a decision about and will convey that
3 decision very quickly because in many cases – and again, looking at my experience in
4 HOC – we’ve been able to decide within a couple of weeks, “That is too expensive a
5 property for us to in fact go in to acquire for affordable housing.” And we, in fact, convey
6 that message. We had not, to my knowledge, received any complaints from the
7 developer community or the owners in terms of unusual delays. The 120 days following
8 are really not to make the decision. That decision, if we’re going to exercise it, is made;
9 but there are requirements in terms of going out to float a bond to pay for the property.
10 And that takes time – again, even on the developer’s side or the private side. There is a
11 need for some time to elapse to go through the whole transfer process. So it’s our view
12 that it is not inordinate. We are not holding up the private sector unduly.

13
14 Council Vice President Knapp,

15 Well, give me an example. So you said in the HOC that you moved quickly. What does
16 that mean? We’ve only had -- what? -- I think, six properties over the course of the last
17 –

18
19 Council President Praisner,

20 No, six properties that we’ve exercised that option. Right. There may have been – we
21 don’t have a number on how many you said, “No” on I don’t think.

22
23 Council Vice President Knapp,

24 Well, no, and I guess that’s my point. Do we know of and exercise the option on a fairly
25 small number, and so to tie people up for an inordinate amount of time when we’re
26 going to exercise our right fairly infrequently.

27
28 Council President Praisner,

29 I think the point Rick is making though is that usually that decision on more expensive
30 properties is made very quickly – less than 60 days. And it’s the due diligence once
31 you’ve said, “Yes” – the due diligence in putting the finances together to sign the
32 contract that takes the whole 180 days – not the initial decision Yes or No.

33
34 Rick Nelson,

35 Well, I don’t have the specific data. Again, recalling the instances where these issues
36 that come up as I was a member of the HOC, I don’t think we said “No” – or let me say
37 it differently. I believe we said, “No” within the first 30 days easily. If it took longer, it was
38 a case where the purchaser was trying to negotiate with the County to in fact agree to
39 extend the rental period for affordable housing in lieu of the County or HOC exercising
40 the Right of First Refusal. But to my knowledge, we did not – “we” meaning at the time
41 HOC – did not prolong that 60-day period to get to “No.” We got to “No,” I think, fairly
42 quickly.

43
44 Council Vice President Knapp,



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1 And do we have –

2
3 Rick Nelson,

4 I'd have to consult with HOC; I do not have the specific data on that.

5
6 Council Vice President Knapp,

7 I may come back to that, but I know there are other lights on. Thank you.

8
9 Council President Praisner,

10 That's okay. Councilmember Ervin.

11
12 Councilmember Ervin,

13 Some of my concerns are going to sound a little redundant. But I first of all want to say
14 I'm really proud to be a co-sponsor of this legislation, and I agree with the Public Policy
15 goal of the legislation. As someone who has rented most of my life and has also lived in
16 subsidized housing, it's an issue that's really, really personal to me. It's not political; it's
17 personal. And so, at the end of the day, what I hope we are able to accomplish is to
18 really do something for the folks who need the affordable housing that we all keep
19 talking about. I have a couple of questions. Some have already been indicated. I
20 appreciate the really hard work that the PHED Committee did on this Bill, but I want to
21 talk about two points. One is in Circle 102, the letter we received from JPMorgan stating
22 that this legislation may hamper investment. Mrs. Praisner spoke about this a little bit.
23 But I wanted you, Mr. Nelson, to speak to that – two points in their letter. "Tenant groups
24 would be given a six-month period to match a bona fide offer from a third party buyer for
25 a property. We believe that this law will put a damper on the price for which one would
26 be able to sell a property in Montgomery County" and "demand a higher return than we
27 would look for normally." I'm concerned. We keep hearing about what's been happening
28 in the District of Columbia; and because it hasn't happened here yet that we think we
29 don't need to worry about it. But I think that we should worry about it. And if the Bill is
30 silent on some of these things that Mike Knapp just spoke about, and I know that the
31 Committee must have talked about this in their worksession. But I'm still really
32 concerned that just because something hasn't happened yet in Montgomery County that
33 it won't happen. So I want you to speak to the letter from JPMorgan if you would, Rick, if
34 that's not a concern.

35
36 Rick Nelson,

37 Two things. Again, in terms of the DC law, the DC law does not provide a Right of First
38 Refusal to anybody other than tenant groups. And the DC law specifically sets up a
39 scenario where the tenant groups are in fact encouraged to sit back and wait for the
40 best offer. And they can drag it out according to that law for a significant period of time.
41 So that's another reason why it's not applicable here in the County. But, again, even in
42 the County, the tenant groups would have to respond generally within 60 days. If the
43 tenant group is not organized, they get another 45 days to respond; and if that were the
44 case, DHCA would be working with that tenant group to try to help them to get the ability



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1 to in fact positively respond. In terms of the JPMorgan letter, I understand what they're
2 suggesting; but I would suggest two things. One, we already have the Right of First
3 Refusal for condo conversions with no time limit; and that has not, to my knowledge,
4 dampened the ardor of the development community to develop rental properties – which
5 is what was suggested here. The fact, again in my view, the development industry is
6 going to find a way to do the business about which they are experts. And they will
7 manage to do it. I don't think that this is a serious concern. The other issue – and I think
8 this is a point -- you mentioned the Public Policy. Montgomery County has in fact
9 established that it is Public Policy to try to preserve affordable rental and sales housing
10 for people of lesser income. And there are some times when there is, in fact, a price to
11 be paid for Public Policy decisions. I think the Public Policy decision far outweighs any
12 negative impact that that Public Policy decision will have. That's why I would urge you to
13 support this Bill.

14
15 Councilmember Ervin,

16 Well, I'm a co-sponsor; I am supporting it. These are questions that I'm raising. Thank
17 you. So let me go to my next point, and that has to do with tenant organizations. The
18 fact that the tenant organizations don't have to maintain a percentage of ownership if
19 they exercise their Right of First Refusal, I'm concerned that rental properties that are
20 taken over – again somebody just brought this up – why is it that we're only asking them
21 to maintain 30% ownership?

22
23 Kathleen Boucher,

24 Actually, the Committee rejected an amendment –

25
26 Councilmember Ervin,

27 Rejected that? You're not.

28
29 Kathleen Boucher,

30 They can't.

31
32 Council President Praisner,

33 No. Marc, I'm sorry. The legislation doesn't have any percentage. That was a
34 suggestion from AOBA; the Committee rejected that suggestion. There are two pieces
35 of legislation – two pieces of law. Rick made that reference. The issue of condominium
36 conversion is not the piece of legislation we're dealing with. That's a separate law that –
37 the only actions we've made recently relate to the order in which units have to be
38 retained for certain discrete individuals as far as characteristics. This property is on a
39 sale of a property. And the only conversation about condominium came on the
40 discussion of the 30% with AOBA; but this is a sale of a property, not a conversion of an
41 existing property by an owner to a condominium process. So this is rental property, and
42 the sale of a building that is rental remaining rental at that point in the process.

43
44 Councilmember Ervin,



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1 Okay. Thank you.

2
3 Council President Praisner,
4 Councilmember Elrich.

5
6 Councilmember Elrich,

7 I'm also happy to support this legislation; but I have a couple of concerns, one of which
8 we were asked not to address right now. But I do want to at least mention it, and that's
9 the five-year period for voluntary agreements. It seems to me that given the problem
10 with retaining affordable housing, that five years is too short a period of time; and that
11 we're just merely delaying the date at which the affordable housing units disappear. And
12 I would prefer a stronger policy that had a longer period of time attached to it. But since
13 that wasn't part of the initial discussion, I realize that we'll have to come back to that.
14 The second thing I want to mention is this issue about the tenants and what might be
15 called the "DC situation." I don't frankly see it as altogether bad because what you're
16 really talking about is at the point the tenants do something like that, the choice is
17 between selling to a developer who's going to displace them for high-end housing or
18 themselves finding a developer who'll probably displace them for high-end housing but
19 also get something out of the deal. And I don't understand why in the marketplace it's
20 right for one developer to do business with another one to extract the maximum amount
21 of profit and wrong for a different group of people, who normally don't have the
22 opportunity to benefit at all from this, to extract anything. The seller doesn't get any less
23 for the property at the end of the day. The disappearance of affordable housing under
24 both circumstances is the same at the end of the day. The difference is, in the buildings
25 I know of in DC, particularly when you're talking about low and moderate income folks,
26 people walk out of the deal with money that might help them put a down payment on
27 something that's affordable, money that might help them get into the housing market at
28 least in terms of support for rental in other locations where housing is more expensive.
29 So I don't see it as necessarily a bad thing. The seller gets their price because this is
30 Right of First Refusal; you have to match. People who normally don't benefit at all from
31 this and simply get displaced and don't know where to go wind up with something out of
32 the deal. I fail to see where that's necessarily altogether a bad thing. I wish that we
33 would also come back and revisit the issue of tenant assistance during condo
34 conversions because a condo conversion can, over time, lead to the same kind of
35 displacement as allowing it to flip into private hands, even if it flips into the tenant hands.
36 But I think the County needs tools in the form of down payment assistance and perhaps
37 lower interest mortgage programs that would help tenants make it more affordable, and
38 at the same time give the County the ability to put in place programs similar to the
39 MPDU or MPDU outward tenants who have to retain affordability where there are
40 restrictions on resale value. But unless the government is willing to contribute either
41 down payment assistance or some kind of good mortgage program, it's hard to argue
42 that they should accept restraints on resale value without the government providing
43 something to assist that. So I think there are a couple of points that we ought to revisit;



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1 but I just want to be on record as not feeling it's a bad thing if tenants benefit
2 occasionally.

3
4 Council President Praisner,
5 Okay. Let me remind my colleagues though that the legislation in front of us is what
6 we're acting on today. We are way behind schedule, so if we could keep the comments
7 to any changes or corrections associated with tenant displacement sale of rental
8 housing. Vice President Knapp.

9
10 Council Vice President Knapp,
11 Thank you, Madame President. I just wanted to come back to the point that I was
12 raising earlier. I just went back and looked at the existing statute and tried to figure out if
13 there was a way to modify the language, and it doesn't appear as though there really is
14 to try and accelerate it. So the only question I had was on Circle 12, it talks about the
15 expiration of the Right of First Refusal. And if I look at this, it would appear as though
16 whether we notify or don't notify, once the 60-day clock has run, in the absence of any
17 communication from County government affirmatively or negatively, then the seller or
18 the purchaser can move ahead as quickly as they choose to.

19
20 Kathleen Boucher,
21 That's correct – 60 days for the County or HOC, 90 days for a tenant organization.

22
23 Council Vice President Knapp,
24 So you either respond or you don't respond. It doesn't make a difference. No one's hung
25 out to dry beyond the 60-day period.

26
27 Kathleen Boucher,
28 That's correct.

29
30 Council Vice President Knapp,
31 Okay.

32
33 Council President Praisner,
34 That's the point I was trying to make earlier.

35
36 Council Vice President Knapp,
37 Because I think that's just – and to your point, Mr. Nelson, earlier – that if it's a "No," we
38 tend to say "No" quickly. I would just like to get on the record to reinforce that because
39 we do – there is a tendency because we just want to take our time, and we tend to take
40 as much time as we can to really – especially since we've exercised our right so
41 infrequently, that if we can do the calculation as quickly as possible, do the due
42 diligence, and really get feedback back to people. I am pleased to have been a co-
43 sponsor to this Bill. I think this is the second thing that we've done in the last couple
44 months as it relates to affordable housing. You know, we all want to try and find the



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1 panacea; there is no such thing. We're going to keep doing a lot of little things that are
2 going to continue to increase the stock in affordable housing; and this is one more
3 piece, and I'm pleased to be a part of it. I just want to make sure that we move quickly
4 to make sure that the market can do what the market needs to do. And so I just want to
5 make sure that that gets on the record, because I think that's an important point. And so
6 I think that's the biggest issue – to just make sure that we're doing our due diligence as
7 fast as we can do it.

8
9
10
11
12 Council President Praisner,
13 Okay. This is now an Expedited Bill. The word “renovation” has been added, and the
14 title of the Bill has been corrected as a technical amendment. Madame Clerk, call the
15 roll, please.

16
17 Council Clerk,
18 Ms. Ervin?

19
20 Councilmember Ervin,
21 Yes.

22
23 Council Clerk,
24 Mr. Elrich?

25
26 Councilmember Elrich,
27 Yes.

28
29 Council Clerk,
30 Ms. Floreen?

31
32 Councilmember Floreen,
33 Yes.

34
35 Council Clerk,
36 Ms. Trachtenberg?

37
38 Councilmember Trachtenberg,
39 Yes.

40
41 Council Clerk,
42 Mr. Leventhal?

43
44 Councilmember Leventhal,



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1 Yes.

2
3 Council Clerk,
4 Mr. Andrews?

5
6 Councilmember Andrews,
7 Yes.

8
9 Council Clerk,
10 Mr. Berliner?

11
12 Councilmember Berliner,
13 Yes.

14 Council Clerk,
15 Mr. Knapp?

16
17 Council Vice President Knapp,
18 Yes.

19
20 Council Clerk,
21 Ms. Praisner?

22
23 Council President Praisner,
24 Yes. The legislation passes 9-0. We'll move now to Bill 48-06. We had a worksession
25 on that last week. This is Streets and Roads – Comprehensive Revision. Chair of the
26 T&E Committee, Nancy Floreen.

27
28 Councilmember Floreen,
29 Thank you, Madame President. When we last left this interesting story, there were a
30 variety of requests for some additional detail; and I will note that staff has provided a list
31 at the end of the packet of some of the principal detailed improvements that this Bill
32 achieves. If folks have particular questions about that, we can go through it – the
33 specifics. I will note that the collective wisdom of the Committee was that we will leave
34 the design details of this ongoing project to the good works of DPWT and the working
35 group that we have asked them to put together to sort out the devil here, because Mr.
36 Andrews noted earlier the importance of identifying pedestrian walkways and the like as
37 a priority in the CIP projects in the Capital Program. This is how they actually get it
38 done. So I would just ask that Mr. Andrews' comments on the earlier legislation be
39 incorporated by reference into this material.

40
41 Council President Praisner,
42 Okay. We are on, I guess, page 8 which are the issues left for Council to consider.

43
44 Councilmember Floreen,



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1 I would say so. And I think Mr. Elrich has some additional language for our
2 consideration. But I will say last we left it, we were faced with the Hatfields and McCoys,
3 sorting out what will happen if the design guidelines do not suit – that they're going to
4 work out in this year-long process – still do not suit a particular solution, at least as
5 some of the players might feel. What the Committee recommends is in that highly
6 unlikely event, we would give that authority to the Planning Board to sort out the
7 ultimate resolution of that. And that's what shown under number one there on page 8
8 under "Remaining Issues for Council decision." The next two pages reflect – where's
9 Mr. Gonzalez? I'm sure Mr. Gonzalez feels much better having gotten out all his
10 concerns on the table, which is what staff has included in the packet in front of us. And if
11 anything, what this litany of concerns identifies is the terrible need for resolution of these
12 kinds of issues and that this Bill is intended to achieve, frankly. Because there have
13 always been conflicts, and our hope has been that this process that we've laid out for
14 setting up design standards for the number of road improvements that may move
15 forward will be the device by which most of these kinds of concerns will be worked out
16 in a collaborative environment. Of course, there's always the odd disagreement; and
17 that's what this list identifies from the Executive staff. And I see Mr. Holmes, whom we
18 welcome here, itching to make a comment. So I think it would be helpful if we heard
19 from Mr. Holmes and then from Mr. Hanson – from the bride and the groom, as it were,
20 on the issue.

21
22 Council President Praisner,
23 I think they're cousins at this point. We don't want to talk about marriage just yet.
24 (Laughter)

25
26 Councilmember Berliner,
27 I don't think they're there yet.

28
29 Councilmember Elrich,
30 It's not allowed here yet.

31
32 Arthur Holmes, Jr.,
33 I'm Art Holmes –

34
35 Council President Praisner,
36 I think Wilma Holmes has something to say about that.

37
38 Arthur Holmes, Jr.,
39 I'm Art Holmes, the Director of the Department of Public Works and Transportation,
40 speaking on behalf of the County Executive. The Executive strongly objects to the
41 language in paragraph 49-32, lines 1208 to 1211, that extend to the Planning Board the
42 authority to set forth alternative design standards for a specific road as a condition of
43 preliminary subdivision or site plan approval. We recommend deletion of the
44 aforementioned language. Even the staff of Park and Planning in their staff report



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1 recommended that that responsibility not be given to the Planning Board. That was
2 overruled by the Planning Board itself. However, the reasons given were that they didn't
3 have the capability -- not the expertise, but the capability to carry out this particular
4 language. I've worked with the engineers -- transportation types -- at Park and Planning
5 and have a great regard for them; however, we have a greater capability and as we see
6 here, we would lose control over our approved right-of-ways. And we think that this
7 language should be taken out and that the Executive Branch should have this
8 responsibility. I have not seen anything that indicates that that's not being care of, so
9 that's our position with those elements that are in your package.

10
11 Council President Praisner,
12 Councilmember Leventhal has his light on. Is that on this issue, George?
13 Councilmember Leventhal.

14
15
16
17
18 Councilmember Leventhal,
19 Madame President and Madame Chair, let me actually ask your guidance here because
20 I want to offer an amendment on this very issue. I also am available now to sort of give
21 a few remarks generally about the Bill, and then I won't have to speak later.

22
23 Council President Praisner,
24 You can do both? Sure, George, thank you. I appreciate your cooperation.

25
26 Councilmember Leventhal,
27 Well, I understand the need to expedite. So I'm going to vote for this Bill on final
28 passage. I expressed a lot of concerns during Committee consideration, and I want to
29 clarify what my concerns were. And it does relate directly to this amendment. So what I
30 see occurring here in this amendment, in this language which I will shortly move to
31 strike, is that the Planning Board is very, very eager to have a greater role in the design
32 of roads. That's what much of this has been about all along. And there have been
33 disputes that could not be settled by the professional staff of the Planning Board and
34 DPWT; and, in many cases, it was left to elected officials to resolve disputes that
35 frankly, I thought were not in the expertise of elected officials. I'm very proud of the work
36 that the voters of Montgomery County elected me to do; and I know a lot about a lot of
37 things. But from time to time, I rely on staff and I rely on informed recommendations
38 from people who are specifically trained in areas where -- I understand I must make sort
39 of broad policy judgments. But on the specific details of lane widths and curb design
40 and the curvature of a turn and these sorts of things, I frequently found myself in this
41 discussion mediating between two very well-trained bodies of experts; and I didn't feel
42 that I was in a position to make the right call. We ended up working our way through it,
43 and I do believe that this Bill overall is well intentioned. And I certainly support the vision
44 of better-designed communities and more attractive spaces for pedestrians to walk



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1 safely. I support those broad goals. Before I get to my motion, I just want to close by
2 saying this. I really want to caution against claiming too much is going to occur as a
3 result of this Bill. We are not going to retrofit every intersection, every road, every
4 community in Montgomery County. And unfortunately – or fortunately because it's a
5 beautiful County -- so I don't want to say unfortunately. I love living here, and I think
6 most people choose to live here because they think it is beautiful and attractively
7 designed. But many of our decisions about land use and many of our decisions about
8 road use were made many years ago, and it would simply cost us too much to change
9 them all now. It can't be done. And so I want to be very cautious about claiming that
10 passage of this legislation is going to mark a major step forward in avoiding
11 pedestrian/automobile conflicts. There will still be pedestrian/automobile conflicts. The
12 best thing we can do for pedestrians is to educate pedestrians to use the crosswalk, to
13 educate them to dress safely if they're going to be walking at night – don't wear dark
14 clothes and jaywalk in the middle of the night. There's some basic, common-sense
15 issues that if we could get those through to pedestrians, we would minimize
16 pedestrian/vehicle conflicts. And, yes, I'm in favor in urban areas of longer crossings for
17 pedestrians and the countdown signals and all of the many things that I think we should
18 and can do for pedestrians. But I don't think we can retrofit the entire County. So when
19 we pass this Bill, which will immediately apply to new roads being constructed by
20 Montgomery County which is an infinitesimal portion of all of the pavement that exists
21 already today and is projected to be a very tiny, tiny portion of what is going actually to
22 occur in the future, we need to understand there is still more to be done to protect
23 pedestrians and that the passage of this Bill, in and of itself, is just another law on the
24 books – in and of itself it does not prevent pedestrian/vehicle conflicts. And so I just
25 want to be very wary of this Council over promising as a result of this Bill, and angering
26 pedestrians still further – as though we had done something and then they still see that
27 we didn't. Now let me get to this point. I'm persuaded by Art Holmes' arguments here
28 that -- a former Chairman of the Planning Board, by the way, General Holmes – that
29 DPWT has the staff, the expertise, and the capacity to design roads. That's its job. And
30 when we start handing off jobs of agencies duly constituted by law with those
31 responsibilities to the Planning Board which -- with great respect – I have great respect
32 for its Chairman, I admire him a lot – has its own issues to deal with. How many
33 additional responsibilities do we really want it to take on right now? If we are not happy
34 – look, I know that there is this belief – there's a belief at the Planning Board and there's
35 a belief among some elements of the public – that the highway engineer culture, the
36 highway engineer mindset is a problem. You can't trust those folks responsible for
37 building roads because you know what they want to do? They want to build roads. And
38 they don't put pedestrians first, and they don't put bicyclists first. I would say they don't
39 put motorcyclists first. And there's a lot of issues, okay, that we want them to consider
40 the totality of. But we are a democratic government. We're elected by the voters of
41 Montgomery County. Edgar Gonzales is answerable to Art Holmes; Art Holmes is
42 answerable to Ike Leggett; Ike Leggett is answerable to the voters of Montgomery
43 County. If you want to change the thinking, change the culture, change the
44 responsiveness of a duly-constituted County agency, work through the democratic



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1 process to do that. But to begin dividing up its responsibilities and parceling them out to
2 the Planning Agency, I just think is a mistake. And so I now move to strike lines 1208
3 through 1211 of the Bill.

4
5 Council President Praisner,

6 All right. It's been moved and seconded that those lines on Circle 47, lines 1208 through
7 1211, "If special circumstances warrant, the Planning Board may adopt as a condition of
8 preliminary subdivision plan or site plan approval, alternative standards for a specific
9 road." And the motion has been made and duly seconded. In the interest of time, I'm
10 going to call on councilmembers who may want to speak to that amendment. But I'm
11 also going to ask you at that point to put on notice anything else – well, we'll come to
12 the other items. Let me take that back. Lights at this point should be associated with this
13 amendment only. Councilmember Andrews.

14
15 Councilmember Andrews,

16 Thank you, Madame President. I think this amendment will strengthen the Bill. I think it's
17 asking for trouble to split the design and implementation responsibilities. I think that was
18 part of the problem with what happened in Clarksburg, and I don't want to go down that
19 road. So I support the amendment primarily for that reason. I think it will result in better
20 coordination of policy.

21
22 Council President Praisner,

23 Thank you. Vice President Knapp.

24
25 Council Vice President Knapp,

26 Thank you, Madame President. I just actually wanted to ask the folks at the table,
27 practically, how this will be applied. For example, many of the new roads we're going to
28 continue to construct will be in Clarksburg because we've got a lot of work there still to
29 do. Some of them have yet to be approved in their plans. And so I just wanted to get a
30 sense of, tell me how this now works. When we have special circumstances or special
31 situations that may exist in that community, where a number of roads are to be built,
32 who owns the process and how are decisions made?

33
34 Arthur Holmes, Jr.,

35 Well, to the best of my knowledge, the roads that were in contention in Clarksburg had
36 been done by the Planning Board. And don't get me wrong. I was there at the tail end of
37 that process, so I was part of the Planning Board. I was very careful as we were trying
38 to do things to make the corrections to make sure that those roads that were the
39 responsibility of DPWT and the County were done by DPWT. And I think you'll find that
40 those roads were done in accordance with the current Road Code. Royce may have a
41 different opinion, but we had no formal way of adjudicating that.

42
43 Council Vice President Knapp



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1 Okay. Well, I guess procedurally – so a site plan has been approved. For whatever
2 circumstance, a change is required to that site plan. Under the way this – if adopted as
3 amended – is structured, if a change is required, who owns the decision to make the
4 change? And once that decision is made, is that decision final?

5
6 Arthur Holmes, Jr.,
7 If it's in the site plan or in the preliminary plan, you've got to go back to the Planning
8 Board and get an amendment.

9
10 Council Vice President Knapp,
11 Okay. And so, under any circumstance?

12
13 Arthur Holmes, Jr.,
14 As far as I know, that's either in law or quasi law. And again, I turn to Royce for –

15
16 Royce Hanson,
17 Basically, the issue is whether the design of the community drives the road design or
18 whether the road design drives the development and design of the community. Now,
19 what happens – we have, for instance, the whole west side of Clarksburg to be
20 subdivided at this point.

21
22 Council Vice President Knapp,
23 Right.

24
25 Royce Hanson,
26 I don't see the issue nearly as starkly as it has been portrayed. In 95% of the cases or
27 more, the standard road design is perfectly fine. There are cases where some
28 alternative to the standard situation, a waiver if you will, may be appropriate and useful.
29 And the question that you have to decide is whether you would prefer the Road Agency
30 to make that decision or the Planning Agency to make that decision, if you're interested
31 as the law provides for context-sensitive design. I'll give you an example you're all very
32 familiar with. It's not in the County; it's in the city of Rockville. It's a block from your
33 office on Maryland Avenue as it goes through the new town center, an arterial street.
34 But modifications were made to it, so there are bump outs at the corners, there's on
35 street parallel parking, and there's change in the pavement. Now, this is to fit an overall
36 design for a community. It seems to us that in these particular and special
37 circumstances, that we're going to have a better designed and better functioning
38 community if at the time of subdivision and site plan, these decisions can be made. I
39 think there is zero chance that the Planning Board will make these decisions without a
40 very careful consideration of the department that will be responsible for the operation of
41 the street. But I think there may be circumstances in which we will simply have a
42 disagreement. Now, one other thing about Clarksburg, because the issue has been
43 raised with regard to Fire and Rescue Services. Fire and Rescue Services did not
44 participate in the development review process leading up to the subdivision application.



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1 No comment was received from Fire and Rescue Services. The plans were approved.
2 When building permits were applied for, Fire and Rescue said, "Uh oh, you know, won't
3 work." We came back to the Planning Board in this case with an amendment to the site
4 plan, and we approved the recommendations of Fire and Rescue with the result that
5 several units of housing were lost from the development involved. We now have a
6 process in which we will not bring a plan to the Planning Board that does not have a
7 letter from Fire and Rescue. Just as we do not bring a matter to the Board that does not
8 have a letter and a recommendation from DPWT.

9
10 Council Vice President Knapp,

11 Okay. And I appreciate many of the comments that you made -- some of which were
12 relevant to this, some of which were not. My biggest issue still remains: Who makes the
13 decision if changes need to be made, and how do we make sure that that decision is
14 the final decision? I mean the whole Fire and Rescue piece -- there's ten years of
15 history there; and I don't disagree they weren't there and he said and she said and lots
16 of people said lots of things and I don't want to rehash that. I want to make sure going
17 forward if a decision is made that a change is necessary, who makes it? Who owns it?
18 How does it get communicated? And how does it ultimately get implemented?

19
20 Royce Hanson,

21 Well, I think that's the essence of the question here as we talk about this particular
22 piece. And I would say that DPWT should do it; we have the expertise to do it. We have
23 --

24
25 Council Vice President Knapp,

26 No, but not should. We have an amendment on the table. If this amendment is
27 approved, who then owns all facets of changes that need to be made as it relates to a
28 "waiver" as you said.

29
30 Arthur Holmes, Jr.,

31 That would be DPWT.

32
33 Councilmember Floreen,

34 Well, if I might interject here, DPWT already has significant waiver rights throughout this
35 legislation. We're not discussing that. And if you take the language out, frankly, what will
36 govern will be the design standards that they're going to --

37
38 Arthur Holmes, Jr.,

39 I say DPWT because -- the Executive Branch, which would mean DPS and DPWT. But
40 let me say one thing. When we talk about the Planning Board and the Planning Board
41 doing things, they are just that -- a planning element. And I don't know of any plan that I
42 have been connected with that at the time of execution hasn't had to have some kind of
43 change. And what we're saying here is that the planning should go on, but the



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1 responsibility for building that road in the County right-of-way should be with the
2 Executive Branch and not with the Planning Board.

3
4 Council President Praisner,

5 Well, let me just interject here. We are talking about this paragraph that deals with
6 design standards. The design standards that are going to govern this have yet to be
7 determined. In essence, we have a year to develop the design standards. The question
8 then is: Even after having adopted collaboratively design standards, does the Planning
9 Board have the ability, in a special situation, to overrule the design standards that have
10 been adopted over this coming year? So the discussion should be on whether, after
11 having adopted design standards or even in this year interim, the Planning Board
12 should have the ability to override, in special circumstances, the design standards that
13 exist now for this coming year and exist after the coming year after they've been
14 adopted. That's the question in front of us.

15
16 Glenn Orlin,
17 Specifically for –

18
19 Council President Praisner,
20 Special circumstances not defined.

21
22 Glenn Orlin,
23 Specifically for streets that are – improvements that are a part of a site plan or
24 preliminary plan.

25
26 Council President Praisner,
27 Right. Special circumstances.

28
29 Royce Hanson,
30 But also in subdivisions or site plans – not generally.

31
32 Council President Praisner,
33 Correct – subdivision plan and site plan.

34
35
36 Royce Hanson,
37 And only in particular or special circumstances.

38
39 Council President Praisner,
40 Right – which are undefined at this point.

41
42 Arthur Holmes, Jr.,
43 Special circumstances – what are special circumstances?



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1 Councilmember Floreen,

2 All right. Again, I would just note for the purpose of the conversation, this language is –
3 there continues to be a variety of waiver provisions given to DPWT throughout that exist
4 and will continue, regardless of the resolution of this particular debate. This only applies
5 to site plans and preliminary plans. DPWT retains full authority to address – to waive
6 other requirements in other circumstances. So this is not a black and white situation. I
7 think it's important to appreciate this. This has very much to do with the roadway or
8 capital improvement issues – sidewalks or roadways with issues associated solely with
9 the projects that Park and Planning is engaged in in any event. And Mr. Hanson
10 referred to that when he identified the context-sensitive design language, which I might
11 note has been included in response to Ms. Ervin's request. So that is part of the debate.
12 And as Mrs. Praisner's noted, we're arguing about – well, they are arguing about an
13 issue that we hope will be resolved through this process. But, as you can see, that's
14 why this process is so important – because there are such strong feelings about
15 ownership of this.

16
17 Council Vice President Knapp,

18 One more specific case just to – in the event that State Fire Code were to dictate
19 something other than what was in a plan, under this amendment would then the
20 Executive Branch be able to make that decision to address whatever changes State
21 Fire Code were to require?

22
23 Arthur Holmes, Jr.,

24 I'm of the impression – and I'd have to ask our counsel – that that would be then done
25 between the Planning Board and the State.

26
27 Councilmember Leventhal,

28 We've still got lines 1211 and 1213.

29
30 Council President Praisner,

31 That's through the CIP process, but this talks to site plan and subdivision – which is, I
32 think –

33
34 Council Vice President Knapp,

35 Right. I'm just trying to make sure –

36
37
38 Royce Hanson,

39 I think part of the answer there is whether or not it has implications for the rest of the
40 subdivision. In the case that I cited to you, it had substantial implications for the
41 subdivision. It meant that the layout of some of the housing had to be changed, and it
42 meant that some housing units were lost as a result of that process. That requires a site
43 plan amendment. And it seems to me that in those circumstances particularly, if
44 something subsequently develops -- whether the road as approved in the subdivision



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1 was 100% agreed to by all parties and that DPWT liked it that way -- if, again,
2 something happens later that impacts other aspects of the subdivision, it really does
3 have to come back as a subdivision or site plan amendment to the Planning Board.
4 Because the Fire Department or Transportation Department or DPS cannot
5 preemptively change a site plan.

6
7 Council Vice President Knapp,

8 Okay. Well, and that's a fair point. So in the event that State Code does change -- which
9 is not unusual for that to occur. We just had code enforcement -- made a number of
10 modifications a year and a half ago, and there were a number of places we were not in
11 compliance because State Code had changed. And under this amendment if DPWT
12 were to make that change, how would that change then -- or determined that this
13 change were required -- how would that change then get cycled back through the
14 process?

15
16 Arthur Holmes, Jr.,
17 I can't answer that.

18
19 Council Vice President Knapp,

20 It's going to be important, whether you can make the decision or not, that the Planning
21 Board get brought back into this process.

22
23 Arthur Holmes, Jr.,

24 Before we go there, let's talk about the organization for making decisions. And what
25 you're doing is bifurcating decision making by putting in a statement that says "in
26 special circumstances" -- which is in itself kind of "loosy-goosy," if you will -- so what I'm
27 saying is that we have the capability; if given the authority, we will have that authority to
28 change. If the Planning Board has something they want to get into with us, they can
29 work with us. But I will tell you that -- and this is not in a pejorative manner -- the
30 relationship to have the two elements work together is not good. (Laughter)

31
32 Council Vice President Knapp,

33 That's why I'm asking these questions.

34
35 Councilmember Floreen,
36 We could feel that.

37
38
39
40 Council Vice President Knapp,

41 Look, the point I want to try to avoid is we sat here two years ago when we talked about
42 transportation requirements in Clarksburg, and we had a representative from three
43 different departments and agencies sitting here on the same projects pointing at each
44 other as to who was responsible and trying to delineate along the process. And the



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1 reality is, we need to get to a point that someone owns it. It doesn't mean that you rule
2 by fiat and then communicate as you see fit; everyone needs to be brought to the table.
3 But I just wanted to get some sense on some specific examples, like a modification to
4 the State Code, how does that get done?

5
6 Council President Praisner,
7 If you wanted to answer the modification to State Code and then we have tons – every
8 light is on.

9
10 Edgar Gonzalez,
11 Under the modification to the State Code, according to the Fire Department and their
12 comments on this issue, then the final authority will be going, in that specific issue, to
13 the State Fire Prevention Commission. So you will have a State agency – somebody in
14 Baltimore -- making decisions on this issue because there are two State agencies in
15 conflict with each other, the Planning Board or the State Charter Agency -- the Planning
16 Board and the Fire Commission. So it gets really nasty. Now, on the issue –

17
18 Council President Praisner,
19 Edgar, if the State Fire Department changes the regulations, it's not going to be related
20 to a conflict between Park and Planning and the State agency. Those regulations are
21 going to come to the full Council to understand what the implications are of those. I
22 mean we're all going to have to deal with what those implications are. They aren't
23 necessarily just a conflict between Park and Planning if they relate to whatever they
24 relate to -- buildings or what else. We'll have to change those standards.

25
26 Edgar Gonzalez,
27 Okay. But in the case of Clarksburg, in the issue that the Chairman has raised, that
28 wasn't for the town center. It was absolutely not in the town center. It was on the other
29 side of Meadowland 355. But anyway, so during the subdivision review process at the
30 Development Review Committee, DPWT, DPS, Fire Department bring up these issues,
31 and so Park and Planning has input from everybody. But right now – in the early 90s
32 when we had the concept of lead agency, and people respected the lead agency, then it
33 was clear who was making the decision. Today –

34
35 Council Vice President Knapp,
36 All right. With all due respect, we want to get an answer; and I appreciate lots of things
37 have happened in the last twenty years. And we can point fingers to lots of people of
38 how things could have worked better or could have worked differently. I agree. But what
39 I want to try and get a sense of right now is if we make the change as proposed by Mr.
40 Leventhal, and there is a modification to the State Code that then requires some change
41 to be made – a special circumstance – how does that decision get made, and how does
42 that information then get communicated to the various parties that need to be at the
43 table?



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1 Arthur Holmes, Jr.,

2 I don't think we have the person here today to answer that question; I'll get you an
3 answer.

4
5 Royce Hanson,

6 I think if you do not adopt the amendment and you stay with the language that's there,
7 these special circumstances are restricted to a condition of preliminary subdivision plan
8 or site plan approval. Whether a state agency makes a change in its overall standards
9 or anybody else makes a change in its overall standards, if those standards change
10 subsequent to the adoption of a site plan, then the site plan will need to be amended.
11 And the Planning Board, basically, has the responsibility for the design and amendment
12 of site plans. And that's really what we're trying to deal with here; and I also want to
13 emphasize again that we're dealing with this in a very limited set of circumstances – not
14 as a general rule. But only if in the development of the site plan it provides for a better
15 environment in some segment of a road, that we should have the opportunity and the
16 responsibility in the context of the site plan of providing some alternatives to the
17 standard characteristics of the road, such as you see right near you.

18
19 Council President Praisner,

20 Well, I can't help the comment. If the "better environment" is a narrower road that is
21 inconsistent with the Fire Code, then you do have the conflict that Mr. Knapp was trying
22 to raise.

23
24 Royce Hanson,

25 We take very special care not to do things that are inconsistent with the Fire Code. I
26 don't believe that there is any chance that we're going to approve an alteration that
27 would result in a violation of the Fire Code. We may have some discussions with the
28 Fire Department, and we have indeed. For instance with access into an area, they may
29 prefer a particular amount of space in which to turn around a hook and ladder. We may
30 offer alternatives; and that discussion goes back and forth and, ultimately, we reach
31 agreement on how to make it work so that the houses are safe and the Fire Department
32 can function as it's supposed to function.

33
34 Council President Praisner,

35 Councilmember Berliner.

36
37 Councilmember Berliner,

38 This is clearly dangerous turf here. With my colleagues' indulgence, I would like to at
39 least explore the possibility of finding common ground here in the context of a possible
40 amendment to Councilmember Leventhal's amendment. And I'd like to explore this with
41 you in this moment and see if we can get closer. I think, Director Holmes, your
42 observation with respect to special circumstances being loopy-goopy is an appropriate
43 concern. Dr. Hanson, as I appreciated it, when you spoke of your desire with respect to
44 this, you spoke of it in the context of "context-sensitive design." Is there another context



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1 in which you believe that you would be proposing this so that one could, if you will,
2 explore the possibility of limiting "special circumstances" in some manner? That would
3 be point number one that I would ask for your observations on. And, finally, point
4 number two would be going back to Director Holmes, the circumstances in which you
5 would find Dr. Hanson's suggestions with respect to this unacceptable. We've had a lot
6 of conversation with respect to public safety sets of issues. I'm not aware of anything
7 else or I didn't hear anything else that was mentioned; there could be. But it seemed to
8 me that one way out of this could be to define special circumstances a little more
9 narrowly such that it would be in order to promote -- where necessary to promote
10 context-specific sensitive design -- where necessary to do so -- and that the
11 recommendation of the Planning Board would be, if you will, presumptively adopted --
12 there would be a presumption in favor of Park and Planning's recommendation except
13 where you conclude that it is injurious to public safety or whatever other criteria that you
14 can share with us that you think would be -- should be dispositive. And that we would
15 then leave that ultimately to you. So it would be as follows, as I'm trying to weave this.

16
17 Council President Praisner,
18 Context-sensitive amendment budget.

19
20 Councilmember Berliner,
21 I'm trying to get through this that we give weight to Park and Planning's desire to ensure
22 that in the design of subdivisions that if a modification of the Code is appropriate for
23 context-sensitive design, that you would adopt that unless you find that it is a threat to
24 public safety or some other factor that I haven't heard thus far in this conversation. So
25 that's the suggestion as one way to weave through this in a way that would give ultimate
26 executive authority to the Department, but yet give credence to and weight to the
27 suggestion of Park and Planning that could only be overridden in limited circumstances.
28 Could I have some feedback from you? My colleagues are rolling their eyes. I'd first like
29 to see if I could get buy-in from them before offering it as an amendment to your
30 amendment, if I could.

31
32 Council President Praisner,
33 Why don't we do this. Let them think about that comment while we have other
34 councilmembers comment, because it may be that there is no interest on this side of the
35 table. So whatever comments they may have may not be helpful to moving this item
36 along. Councilmember Ervin is actually next.

37
38 Councilmember Ervin,
39 I serve on the T&E Committee and have sat in this room for -- what? -- six months now
40 of conversations back and forth on the Road Code. And in my opinion -- and Nancy can
41 tell me if I'm wrong and George, too -- the entire Bill is about context-sensitive design.
42 This whole, entire conversation is about how we build roads differently in the future, how
43 we pay attention to multi-modal uses -- using Arlington model if I can just throw one out
44 there -- which is very different from the way we're building roads. And so I am going to



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1 vote against this amendment that George proposed because part of the problem here is
2 that, with all due respect to everybody who came to the table many times from DPWT,
3 is that when we got stuck, it was because there was a lot of resistance to change on
4 your side of the street. And it seems to me that if this is all about design, that we can't
5 have engineers making decisions that are all about how we design communities and
6 roads, etc., into the future. And so I personally believe that if we were to change this
7 part of the Bill and vote for this amendment, it would really change all of the work that
8 we've been doing up until this point. So I am going to vote against the amendment.
9 There has to be a lead agency. I believe it's Park and Planning. I believe that the two
10 agencies can work together – especially if the issues are only going to be very narrow.
11 We're not going to have these kinds of conversations on a daily basis. I don't see what
12 the issue is here. So if we're going to build roads differently, if we're going to take into
13 account good design -- context-sensitive design – planners need to be at the table. And
14 in my opinion I think they need to be making some of these very crucial decisions at the
15 end of the day.

16
17 Council President Praisner,
18 Councilmember Leventhal.

19
20 Councilmember Leventhal,
21 Well, I appreciate Councilmember Ervin clarifying the issues; and I always enjoy
22 working with her. She has very clearly laid out her view, and that is that an agency other
23 than the Transportation Agency should be designing roads.

24
25 Councilmember Ervin,
26 That's not what I said.

27
28 Councilmember Leventhal,
29 Well, you said when it comes to design, the planners should be doing the design and
30 should be the lead agency. That is what you said.

31
32 Councilmember Ervin,
33 On specific issues, George. You know I think you're just taking – don't get carried away
34 with what I said. What I said is when we have to make decisions on these very
35 narrowly-defined issues, somebody has got to make the decision.

36
37 Councilmember Leventhal,
38 Okay. But as I read the language, it may not be narrowly designed. Director Holmes
39 raised the question of what are special circumstances. it's very clear to me from a plain
40 reading of the language here that special circumstances will be determined by the
41 Planning Board. "Where special circumstances exist, the Planning Board may..." and
42 then take into its hands that power which is granted here with respect to those
43 properties that are defined by a site plan or subdivision plan. The Planning Board will
44 determine how often it wants to step in and design roads – in circumstances described



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1 here, site plans and subdivisions. And I would simply say that if we don't trust – and I'm
2 going to quote Chairman Hanson here – our “Road Agency” to design roads --
3 Chairman Hanson said, “Do you want the Planning Agency involved, or do you want the
4 Road Agency?” Some might say that DPWT is actually our Transportation Agency since
5 DPWT also runs Ride On Bus and also liaises with Ramada and is also responsible for
6 bicycle and pedestrian safety issues. But we've heard here from the Chairman of the
7 Planning Board that the Planning Board views it as the “Road” Agency; and the
8 question is, Do we trust our Road Agency to design roads? And I would just submit that
9 if we do not, we have problems that are much more significant than these few lines of
10 this Bill. And let me just finish if I may. I'm just going to say again, Councilmember Ervin
11 correctly asked, “Which is the lead agency?” And in my judgment, the lead agency on
12 transportation should be the Transportation Agency; I don't think that's very complex.
13 And that if we're going to insert another agency's better judgment into the role of the
14 Transportation Agency on transportation, we're going to have problems downstream.
15 What kind of problems? Here you have the Chairman of the Planning Board, and the
16 former Chairman of the Planning Board – currently Director of Transportation – who just
17 don't see eye to eye on some fundamental questions. We've had the Director of
18 Transportation state here – right here – that the relationship between his staff and
19 Chairman Hanson's staff is not good. We're uncovering some pretty significant
20 problems here. And if we're identifying a lack of confidence in our Transportation
21 Agency to carry out transportation design, those are some pretty significant problems.
22 Now, I'd prefer to hope that we can, indeed, work together as Councilmember Ervin said
23 that the two agencies can. But what I saw over the course of the several weeks of
24 working on this Bill was they were not able to. And what I heard articulated were some
25 pretty deep biases, frankly, within the Planning Agency as to the capacity of the
26 Transportation Agency to take into account some very fundamental concerns. Now,
27 what I heard from the Transportation Agency was repetitively saying, “What about the
28 capacity of trucks to deliver cargo? What about the capacity of fire engines to prevent
29 homes from burning down?” – some things that struck me as very fundamental with
30 respect to moving people and transit and buses and freight. And so we've got some
31 pretty significant disconnects here. And I understand the Planning Agency believes it
32 has a better capacity to imbue this County with a vision of design excellence and
33 context-sensitive principles and blueprints that make us imagine that we will have a
34 beautiful County. In fact, we're not retrofitting the entire County. But I would hope that
35 we could trust the Transportation Agency to carry out transportation responsibilities; and
36 if we can't, I think we've got problems that are much more significant than whatever
37 resolution the Council finally works its will on with these three lines of text.

38
39 Arthur Holmes, Jr.,
40 Ms. Praisner –

41
42 Council President Praisner,
43 Very briefly, Art, because I want to get to the others.
44



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1 Arthur Holmes, Jr.,

2 Yes. I'd just like to read you an excerpt from the staff report regarding this – giving
3 authority to the Planning Board. This is the staff. "We believe that it would be best if the
4 responsibility for waivers for the requirement of Chapter 49 remain with the Executive."
5 And that is because they say that they don't have the engineers and the engineering
6 capability. Not that they don't have good engineers; I've worked with them. But they
7 don't have that capability. We do have that capability in the Executive Branch, and I
8 think that's where it should lie.

9
10 Councilmember Floreen,
11 Madame Chair, I have to interject.

12
13 Council President Praisner,
14 Go ahead, Nancy.

15
16 Councilmember Floreen,
17 I will note that those waivers are firmly implanted in the legislation already; so that is not
18 an argument. And I have to say, this is exactly why those stormwater partners have
19 asked the Council to take over the role of writing these rules, which we have really
20 rejected, and why they've requested that there be a facilitator – because there is such
21 strong debate. But this is a tempest in a teapot. The designs that they are arguing about
22 being not adhered to or not implemented haven't even been written. I would point out
23 there's a year-long – we'll see – a year-long process for the details to be worked out.
24 And if this group cannot come to agreement, they can come back to us and say,
25 Change this and change that to achieve the end that we seek here. But the fact of the
26 matter is, there's an argument going on about authority which is what precipitated this
27 whole effort in the first place; and this is a good example of why we're leaving it to the
28 experts to come up with a design of solutions that will address all these issues.

29
30 Council President Praisner,
31 I agree, Nancy, that we are; and as a co-sponsor of the legislation, I guess I hadn't fully
32 focused on these three lines as much as others earlier. But I definitely believe we are
33 trying to create new standards that speak to more flexibility, more context-sensitive
34 standards. The question, it seems to me, once those standards are adopted that
35 inherently include all of these items: Does the Planning Board still have the authority?
36 Because this speaks not just to the development of the standards, but beyond the
37 standards adopted giving authority to the Planning Board to have different standards
38 beyond the standards that the folks are suggesting will take a year. My wonderment is
39 whether there would need to be alternative standards if you actually do the work that
40 needs to be done in this coming year? If that work is as meaningful as I think the
41 Council wants it be – alternatives – there would be inherent within those standards the
42 flexibility to accommodate certain situations and also to maintain that public safety and
43 environmental or other concern that might come up for a site-specific road that also
44 would incorporate, I think as the Chair continues to say and I agree with her, the waiver



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1 option which is going to exist all the way through, still in the law. But what I think Nancy
2 is concerned about and I share it, is if we can't get through the establishment of the
3 legislation to develop and authorize the development of these new sensitive standards,
4 then how do we get there? I guess I've come to the conclusion in the last three days
5 that including this alternative at this point is inconsistent with creating the climate that
6 would bring both the Planning Board and the Department together. If they both have the
7 onus of developing standards and process, then you don't want to give special
8 circumstances at this initial point because those should be considered in the
9 development of the standards. And not having these three lines may encourage the kind
10 of coming together because there isn't that "special circumstance" sitting there as an
11 impediment, perhaps, to find common ground. So in the last few days I've decided that
12 I'm going to support the amendment Mr. Leventhal has suggested because I think it will
13 force the kind of cooperation -- and sometimes Council has to legislate cooperation --
14 that I think we want to happen. Councilmember Elrich.

15
16 Councilmember Elrich,

17 I find this discussion amazing. (Laughter) At a fundamental level, I'm having a hard time
18 getting it because I don't understand how something could be put on paper that another
19 agency would then say doesn't meet standards and can't be built and shouldn't be built.
20 And I don't understand how you could then change it at the other agency's level and not
21 expect that you'd have triggered a redo of the work that was done in the first place. If
22 you change the road design and the right-of-ways and whatever ever else -- God knows
23 what you all are contemplating -- at the Executive level, then the plan itself has to go
24 back for revision as Royce suggested. But on the other hand, I don't understand how
25 Park and Planning could put something on paper that it didn't know would be
26 acceptable -- that the other agency would say, "We can't build this and it doesn't work."

27
28 Royce Hanson,
29 We don't.

30
31 Councilmember Elrich,

32 Okay. And the fact that you guys strongly disagree that whether you do or you don't --

33
34 Arthur Holmes, Jr.,

35 I would disagree with what he just said.

36
37 Councilmember Floreen,

38 I think we should invite Mr. Bauman to come down here to split the difference between
39 the Planning Board Chairs in the room.

40
41 Councilmember Elrich,

42 So this is the problem I'm having with this, is that it seems to me that we shouldn't be in
43 this situation in the first place. What I would think would come out of the next year would
44 be, you guys ought to come up with a shelf full of acceptable designs. I mean there



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1 can't be a debate about – you know, there's got to be a turning radius below which it's
2 unacceptable. There's no way to accomplish the kind of things that have been laid out in
3 this Road Code at street widths that are too narrow – or, on the other hand, too wide.
4 So I don't understand why the end of this process in the year isn't a tool kit that Park
5 and Planning can then happily pull from and say, Here's our urban design tool kit.
6 Here's our tool kit for neighborhoods where we're going to have slightly more
7 constricted flow, and this is how we're going to use it. I just can't believe that this is all
8 infinitely variable; and that after a year of doing this, you guys are going to yet have
9 other things that people can conjure up – again remembering that we're talking about
10 the last increment, sort of, of new development within the County. I mean how much
11 possibility is there? And I'm afraid of the answer to that question. I mean I'm thinking of
12 Kentlands. Would Kentlands be able to be built -- some of the streets in there --under
13 County rules?

14
15 Arthur Holmes, Jr.,

16 Yes.

17
18 Councilmember Floreen,

19 Not now.

20
21 Councilmember Elrich,

22 She says, "No," and you say, "Yes." (Laughter)

23
24 Council President Praisner,

25 We're not talking about current County rules, folks. We're talking about standards that
26 are going to be developed.

27
28 Councilmember Elrich,

29 So the question is – we use Clarksburg as the poster child for what went wrong.
30 Kentlands seems to be a place where a lot of things got done right; but if it's not
31 permissible under current County rules –

32
33 Councilmember Floreen,

34 City of Gaithersburg.

35
36 Councilmember Elrich,

37 City of Gaithersburg. So if the County couldn't allow that, would that be a good thing –
38 not to be able to create something that looked like Kentlands? And Edgar is saying –

39
40 Edgar Gonzalez,

41 And we're doing it at Cabin Branch.

42
43 Councilmember Elrich,

44 We'll talk about Cabin Branch – a poster child for something else.



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Council President Praisner,
Not now, please.

Councilmember Elrich,
Definitely not now. I'm inclined – I could agree with anything for a year. I could support George's amendment and say, "Do this for a year and come back." But I really think that I don't want – a year from now if Park and Planning came back and said DPWT had a range of options that would have been successful and only allowed this range, knowing that there are other things that could be done that would pass the test, I would take this authority away from DPWT in a heartbeat – because you can't use – and I do share George's concern about the desire for throughput over many other things in the community. The most important thing, I think, in DPWT is how many cars they can put through on a road, and not necessarily all the other stuff. And that's just an opinion shared by a number of people.

Arthur Holmes, Jr.,
I would say to you, sir, that you're wrong.

Councilmember Elrich,
I know you'd say that, and I would say that you're wrong; so we're even on that. But I think there are perceptions out there. So I would be very concerned if somebody came back and said, "We gave them options that are used in other jurisdictions that are sensible options, and they've said we can't use these tools." That would be a problem. And I would be equally unhappy if Park and Planning came back and said, "We think we should be able to do what's not done anywhere else. And even though the standards and nobody else thinks this is supportable, we still think we ought to do it." There's got to be some kind of common sense test to this, and I don't see it.

Arthur Holmes, Jr.,
I would say to you that as long as I'm the Director of DPWT and we're going through this year process, that it will be an inclusive process. And it will not be a process driven by DPWT alone. I will give you that promise.

Councilmember Elrich,
That said, I will also support George's amendment. But I will introduce a repeal of that in a heartbeat a year from now if this thing isn't resolved the way it's supposed to be resolved.

Arthur Holmes, Jr.,
I would agree with you.

Councilmember Elrich,
You guys can't do this; you've got to work together.



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1
2 Arthur Holmes, Jr.,
3 I agree.

4
5 Council President Praisner,
6 Councilmember Berliner.

7
8 Council Vice President Knapp,
9 He left.

10
11 Council President Praisner,
12 Oh. Well, Councilmember Trachtenbeg. Duchy, you're next. The flashing lights are not –

13
14 Councilmember Trachtenberg,
15 It doesn't seem like I'm required at this moment; and given the fact that Councilmember
16 Elrich just made what I consider to be very appropriate remarks, I've been sitting
17 listening to this. And when I came to the table this morning, I thought I knew what I was
18 going to do with this. And now after listening to all the sides that have been presented,
19 it's very clear to me that we've got a certain level of dysfunction here. And we're not
20 going to address it by going back and forth and pointing fingers about what's gone on in
21 the past. And I think at best what I would suggest to everyone is that the conversation
22 right now is premature. And I know that's what the Council President was suggesting,
23 and certainly Councilmember Elrich was really saying the same thing. When George
24 first proposed his amendment, I was not inclined to support it because the Bill in my
25 mind – and it's the reason why I supported the Bill and listed myself as a sponsor from
26 the very beginning is because in my mind, it's really about building communities and
27 changing the design standards we do for that. And I see an integral role that Park and
28 Planning needs to play in that. And my inclination at the very beginning was to go and
29 say, "No, I don't support what Councilmember Leventhal is recommending." But at this
30 point, since there is such a lack of agreement and consensus, I'm going to support what
31 George is recommending; but I want a clear sense of how the Planning Board, Park and
32 Planning, and DPWT are going to work together over the next few months. And that
33 isn't something we're going to stage in this piece of legislation. But for my own peace of
34 mind as I leave here this morning, I want some sense of commitment that some of these
35 issues are going to get addressed over the course of the next year. I want a sense of a
36 timetable about that because it's very clear to me if we're going to have this kind of a
37 difficult and prickly conversation right now, we're going to have ones that are even more
38 polarizing in the months to come. And I don't want to be here in another year arguing
39 about this. This was a bold step to move us in the right direction. I know that's what
40 Councilmember Floreen was hoping. I know staff spent years investing a great deal of
41 effort and time in putting this legislation together. And I think we've got to move forward,
42 but let's not get stuck on one or two details. The essence of the Bill is something that
43 the community needs. And, again, at this point, let's find consensus. Let's say that we're
44 going to revisit this as we do the work in the months ahead. And what I am going to



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1 suggest is that we set some timetables, just because I don't want us to be in limbo; and
2 I'm not comfortable putting us in limbo. And in effect I think that's what we're doing.

3
4 Council President Praisner,
5 Some timetables -- I thought we did from a standpoint of the reporting back and the T&E
6 Committee and some other issues that they're already incorporated. Committee Chair?

7
8 Councilmember Floreen,
9 They're in the legislation.

10
11 Councilmember Trachtenberg
12 They're in the legislation; but, again, I'm just hoping that we get a verbal commitment
13 because it seems to me we're out of --

14
15
16 Council President Praisner,
17 Verbal or otherwise, the T&E Committee's going to schedule meetings and have --

18
19 Glenn Orlin,
20 And the standards in the uncodified portion of the law will go into effect in a year unless
21 the executive rules are transmitted or the Council --

22
23 Councilmember Floreen,
24 We're making them get in a room and work it out. This is a relatively academic debate.
25 But at the end of the day, you can see the debates that are written into the legislation as
26 it exists, because waivers are already there. And the question is: What role would the
27 Planning Board have to ensure the sensitivity to communities that has been the point of
28 this all along?

29
30 Council President Praisner,
31 Okay. I have three lights -- Councilmember Knapp, Elrich, and Berliner. And then we will
32 vote on the amendment.

33
34 Council Vice President Knapp,
35 Thank you, Madame President. Just a quick follow-up. Mr. Holmes, you'd indicated that
36 the person in the room wasn't here to answer the question as to who is going to make
37 decisions. And while I will be supportive of Mr. Leventhal's amendment, I'd like to get
38 something in writing that articulates how those types of decisions will be made going
39 forward because I think that's critical.

40
41 Arthur Holmes, Jr.,
42 I will do that, and I will do that rather quickly.

43
44 Council Vice President Knapp,



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1 Okay. Thank you.

2
3 Council President Praisner,
4 Councilmember Elrich.

5
6 Councilmember Elrich,
7 A quick question for Mr. Hanson because you're shaking your head nicely – No, but
8 you're shaking your head nicely. Can you give me an example of what you wouldn't be
9 able to do in the way of context-sensitive design as things are now or as you fear they
10 might transpire?

11
12 Royce Hanson,
13 Yes. If a subdivision is being planned that, let's say, contains an arterial street; and the
14 recommendation that we receive from DPWT is to maintain throughout the entire
15 subdivision the basic standard arterial street in terms of the width of the right-of-way;
16 whether it -- in this case is probably closed section; the width of sidewalk; whatever the
17 standards are for pavement and so on; if the objective in this subdivision is to try to
18 create a district on some stretch of that street where we would like, for instance, lanes
19 to be slightly narrower in order to provide more sidewalk space than would be the
20 ordinary standard for that; that we might want bump outs at the corners, in other words
21 in terms of the design this would seem to work good in terms of calming traffic,
22 providing opportunity for parking - that's parallel, on the street – it could, if you're
23 dealing with a street treatment such as a place like Bethesda or Silver Spring or some
24 of the other communities where you want special treatments that are not standard in the
25 road design; and if the Department simply said, "No, you can't have that," as I read the
26 legislation with the amendment, you can't have that.

27
28 Councilmember Elrich,
29 So your example is Maryland Avenue is an arterial. They've done a bunch of stuff on
30 that road in Rockville that you would not be able to do on an arterial.

31
32 Royce Hanson,
33 If the Department says, "No" – if that's not part of the standard. But they'd have to say
34 "No," you know.

35
36 Arthur Holmes, Jr.,
37 I hate to be confrontational, but we're talking about "ifs" here.

38
39 Councilmember Elrich,
40 You don't have to be.

41
42 Arthur Holmes, Jr.,
43 We're going to have a year; and what we're supposed to do is put together a range of
44 things when we look at standards. I would hope that there would be something in there



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1 that we could get close to. And if he comes in with a plan, we build what the Planning –
2 we don't do anything except what the Planning Board tells us to build. And I would think
3 that we could accommodate that. We could say, if I did so and so. I'm not going to do
4 that. And we would hope and we will try in our efforts to write the Code, as we work all
5 together, to have a number of alternatives there. If there are things that have to be
6 changed, then we'll have to change them. I'm being painted – I'm not saying me,
7 myself. I'm being painted as being –

8
9 Council President Praisner,
10 Councilmember Elrich, I think you're getting a continued flavor of the differences of
11 opinion. I'm not sure that continued hypotheticals will help with this process.

12
13 Councilmember Elrich,
14 I didn't think that every discussion needed to be a confrontation, but that's okay.

15
16 Council President Praisner,
17 Councilmember Berliner.

18
19
20 Councilmember Berliner,
21 Well, let's just see if the conversation that has ensued perhaps informed the parties as
22 to whether or not some compromise is possible or desirable. So, Dr. Hanson, my
23 question to you is I look up here and I sense that there are probably the votes to strike
24 this provision. So I say to you: Is there a way in which we could advance your desire to
25 have context-sensitive design in subdivisions such that you could, if you will, put forward
26 a proposal that would waive the rules that have yet to be determined for that purpose?
27 And, Director Holmes, my question to you is: Would you be comfortable with a context
28 in which he comes forward with a proposal to waive the rules in order to advance
29 context-sensitive design; and that that is presumptively okay unless you conclude – and
30 ultimately the buck stops with you – so this is consistent with the desire of
31 Councilmember Leventhal to make the Executive the ultimate authority – that then in
32 the exercise of that ultimate authority, that you would give deference to his
33 recommendation unless you conclude that as a matter of public safety or some other
34 factor that, again, has yet to be articulated, is not possible or –

35
36 Arthur Holmes, Jr.,
37 Very definitely I would be able and be willing to do that. I don't believe that history will
38 indicate to you that I'm a guy who – it's in my pocket, it's going to stay in my pocket. We
39 want to have as many iterations of the Code as we can, and we want to do it together.
40 So we would hope that these would be minimal, but they're going to happen and we
41 should take care of it and we will take care of it.

42
43 Councilmember Berliner,



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1 All right. Let me just get to the bottom line. Would that formulation work for you as an
2 amendment to Councilmember Leventhal's amendment to strike the language which
3 would then be precisely as we articulated? Would that work for you, Dr. Hanson?
4

5 Royce Hanson,
6 Well, I'm not sure what the precise stipulation is.
7

8 Councilmember Berliner,
9 I was hoping to finesse that.
10

11 Council President Praisner,
12 Roger, I really do think that absent some language, folks are – you really do need to
13 make a motion with some language.
14

15 Councilmember Berliner,
16 I will make a motion with some language.
17

18 Council President Praisner,
19 Okay.
20

21
22
23 Councilmember Berliner,
24 All right? And I will ask staff for some support with respect to this, but I will do my best. I
25 am now looking at lines 1208 through 1211 – could be 1209, I can't tell.
26

27 Council President Praisner,
28 It starts with 1208.
29

30 Councilmember Berliner,
31 All right. So bear with me, Council President; I'm trying to do the best I can here.
32

33 Council President Praisner,
34 Okay.
35

36 Councilmember Berliner,
37 "If," and I want to strike "special circumstances warrant" and insert "the Planning Board
38 determines that a waiver from the Road Code is required to advance context-specific
39 design, the Department of Public Works and Transportation shall adopt that
40 recommendation unless it concludes it would be injurious to public safety."
41

42 Council President Praisner,
43 Okay. You would substitute on lines 1208 to 1211, and folks if –
44



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1 Councilmember Floreen
2 Second. (Laughter)

3
4 Council President Praisner,
5 Well, the comment I wanted to make is that if the Council's counsel has some concern
6 with the specific words, please indicate what they might be at this point. "If special
7 circumstances warrant, the Planning Board may determine that a waiver from the Road
8 Code is required to advance context-specific design, then DPWT shall adopt that
9 recommendation unless it concludes that it would be injurious to public safety."
10 Comments? Mr. Faden.

11
12 Mike Faden,
13 The only substantive one I've got is we do a little minor wordsmithing – not say "wavier
14 from the Road Code" but say, "waiver from the design standards."

15
16 Councilmember Berliner,
17 Thank you.

18
19 Glenn Orlin,
20 And secondly, this only would only apply – am I not correct? – this would only apply to
21 subdivision and site plan.

22
23 Councilmember Berliner,
24 That's correct.
25 Glenn Orlin,
26 And thirdly, I was looking at everyone at the table; is this really the Department of Public
27 Works and Transportation or is it the Department of Permitting Services? Permitting
28 Services is typically the one that does the permitting on subdivision –

29
30 Councilmember Berliner,
31 Should be make it the Executive Branch?

32
33 Royce Hanson,
34 I think that that would be better, to say the "Executive Branch." You need to name some
35 individual – could be either "Director" or could be the "County Executive. "Executive
36 Branch" is not an entity.

37
38 Councilmember Berliner,
39 Well, how about the County Executive in that context?

40
41 Councilmember Floreen,
42 Or his or her designee?

43
44 Council President Praisner,



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1 Okay. "If the Planning Board determines that a waiver from the design standards during
2 subdivision plan or site plan review," – is that what you're saying?

3
4 Glenn Orlin,
5 Yes.

6
7 Council President Praisner,
8 "...is required to advance context-sensitive design, the..." which department?

9
10 Councilmember Berliner,
11 "...the County Executive or his designee..."

12
13 Council President Praisner,
14 "...shall adopt that recommendation unless it concludes it would be injurious to public
15 safety." All right. It's been moved and seconded that that be a substitute for –

16
17 Councilmember Berliner,
18 Can I – Director Holmes?

19
20 Arthur Holmes, Jr.,
21 I think it would work.

22
23 Royce Hanson,
24 I think so.

25
26
27 Councilmember Berliner,
28 Thank you.

29
30 Council President Praisner,
31 Okay. We have this as a substitute motion for the motion made by Councilmember
32 Leventhal. All in favor of the substitute motion, indicate by raising your right hand.
33 Councilmembers Ervin, Elrich, Floreen, Trachtenberg, and Berliner. Those opposed?
34 Councilmembers Praisner, Leventhal, Andrews, and Knapp. The amendment is carried.
35 Folks, we'll have to make sure that the language is clearer. In my reading, I may have
36 transposed; but they will fix that.

37
38 Glenn Orlin,
39 We'll get the language around to everybody today.

40
41 Council President Praisner,
42 All right. We now have the definition of reconstruction on page 10. DPWT would modify
43 the definition. Council staff is recommending -- this has not been before the Committee
44 as I recall. Council staff is recommending that we not further amend the definition.



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Councilmember Floreen,

And let me just speak to that, Madame President. And I know Mr. Elrich has some additional language he would propose, which I'm fine with. But I would just comment that the Department retains significant waiver opportunities throughout this legislation. No one's really treading on that. But the real question is, When we can improve these roads as we reconstruct them, or let's set this as a goal and work backwards from that as opposed to eliminating that achievement. And that's really what the current language is intended to achieve. I appreciate the Department's desire for real certainty and predictability. But if we have the opportunity to change what's existing, and it's doable, and it doesn't affect safety issues, let's try to do it, it seems to me. And that's what the current language would permit. Again, as I said, the Department retains that opportunity to waive those rules when things don't work. And, again, it's very much like the previous conversation.

Council President Praisner,

Okay. So, Nancy, let me assume then that as Chair of the Committee, you're speaking against the DPTW recommendation?

Councilmember Floreen,

That is correct.

Council President Praisner,

Is there any motion by any councilmember to introduce the DPWT language? I see some lights, but I assume they're not on this item. Absent any motion, we'll move on. There are two lights. Councilmember Elrich.

Councilmember Elrich,

I have a little, teeny, non-controversial amendment. Nancy and I agree and that's -- On Circle 52, line 1293, the language says, "In addition, when the road is resurfaced, the road may also be restriped to meet any applicable lane width standard and may include bike lanes where appropriate." In the spirit of the previous discussion, I would like to replace it with language that says, "Unless extenuating circumstances would result in a safety hazard, when a road is resurfaced, the road must be restriped to meet any applicable lane width standard and may include bike lanes..." In other words, it gives us -- when we're restriping, it lets us do it. If there are reconstruction issues that would -- it would address reconstruction and provide a safety element. I wouldn't expect you to restripe something that's unsafe; but to the extent that we can do it now, I think we ought to do it now. I think it's similar to what George's point was earlier, was the real limited applicability of this. If we require that things be restriped at resurfacing, we'll at least get some benefit --

Council President Praisner,



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1 All right. Is there a second?

2
3 Councilmember Floreen,
4 Second.

5
6 Council President Praisner,
7 Moved and seconded. Discussion on that item?

8
9 Glenn Orlin,
10 Would you repeat the language?

11
12 Council President Praisner,
13 Yeah. Repeat the language, Marc.

14
15 Councilmember Elrich,
16 "Unless extenuating circumstances would result in a safety hazard, when a road is
17 resurfaced, the road must be restriped to meet any applicable lane width standard and
18 may include bike lanes..."

19
20 Glenn Orlin,
21 Can we clarify when you say, "may include bike lanes," means it's not a must for the
22 bike lanes; it's only a must for the lanes? Right. Yeah. Same as the original language as
23 far as "may include bike lanes."

24
25 Council President Praisner,
26 All right? Is there any objections to the amendment? If not, it would be the amendment
27 as stands from the Council. Councilmember Berliner. Nope? Lost him again.
28 Councilmember Knapp.

29
30
31 Council Vice President Knapp,
32 Thank you, Madame President. This actually goes back a little bit; it's not on the
33 amendment as it's before us. It's on number 6 – or number 5 I guess on page 6, the As-
34 built Drawings piece. I missed that discussion; I had to leave early last week. And I just
35 wanted to get some clarification as to what actually now happens with the as-built
36 drawings as it relates to the document in front of us.

37
38 Council President Praisner,
39 It goes to the Department, which will keep them as part of, I guess, pulling a permit; so it
40 would go to DPS.

41
42 Council Vice President Knapp,
43 So every franchisee has –
44



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1 Council President Praisner,

2 When you get a franchise, it's not just a franchise; it's pulling a permit. But when you get
3 a franchise, the cable office is involved in that. This would mean that we wouldn't have
4 two sets of – the requirement would mean everything is retained by DPS in the permit
5 process.

6
7 Mike Faden,

8 And it brings in, after the fact, actual drawings as opposed to what was submitted for the
9 permit which oftentimes doesn't report what actually happens.

10
11 Council Vice President Knapp,

12 And happens with that information, and how do we use it?

13
14 Mike Faden,

15 What it says in the Bill is DPS retains it; they keep it confidential; they can distribute it to
16 another County Department which needs it. The exact language is, "to perform essential
17 construction maintenance, regulatory or security functions." It is not available – we
18 agreed it wasn't available anyway to the public under the State Public Information Act,
19 but this language is intended to bolster that.

20
21 Council Vice President Knapp,

22 We use it as needed when it's construction or some activity is going on.

23
24 Council Vice President Knapp,

25 Do we use it? I guess that's my question. I understand we're requiring it –

26
27 Council President Praisner,

28 No, we don't right now have that information; but we would –

29
30 Council Vice President Knapp,

31 We do from some, don't we?

32
33 Council President Praisner,

34 Not really. We do have the franchise information which we use from a franchise
35 perspective of knowing who else is in the right-of-way when there is an issue of some of
36 the requirements for mitigating cuts to the right-of-way by using the contributions of fiber
37 by a franchise holder so we know where it exists so that we can maximize its use.
38 That's how we use that piece.

39
40 Council Vice President Knapp,

41 Okay.

42
43 Council President Praisner,



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1 Most of it is related to – from a Homeland Security and from a construction perspective.
2 That's how we use it.

3
4 Council Vice President Knapp,
5 Okay. In the course of the next year when we're trying to put all this information
6 together, I'd like to at least get some type of documentation that shows both how we're
7 collecting it and how we're actually utilizing the information. As government we can
8 collect lots of stuff, and I think that we do. I'm just not sure how much we actually use
9 the stuff that we collect. And so I'd just be curious to see how it's informing decisions
10 and being used to make better decisions.

11
12 Mike Faden,
13 Staff thinks this is a good subject for MFP Committee follow-up.

14
15 Council Vice President Knapp,
16 Okay. And then we have the follow-up issues which – are you going to walk through
17 those?

18
19 Council President Praisner,
20 Well, I'm just going to highlight them.

21
22 Councilmember Floreen,
23 Yeah, we did review them last week –

24
25 Council President Praisner,
26 We did last week, but we can highlight them again just very quickly, Nancy, on page 11.

27
28 Councilmember Floreen,
29 As you can see, this would be an easy romp through the park for the group to put
30 together a comprehensive set of road and street design standards in Executive
31 regulations which we will have the privilege of reviewing in a year from now. I'm sure
32 everyone will make that a comfortable experience. And we have had requests from the
33 community as to how that be handled, and we prepared a letter from the Council
34 President to the County Executive as to how that will be implemented; and we are
35 confident that everyone's on board.

36 Council Vice President Knapp,
37 I'd request that we actually solicit an update six months in, just to make sure – If you
38 look at the end of this, I think it's 126, we would like them to get right to it; and we will
39 hear from them in I think it's September.

40
41 Glenn Orlin,
42 January 1st and April 1st.

43
44 Mike Faden,



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1 The dates are on 127.

2
3 Councilmember Floreen,
4 We're not going to micromanage; we're just going to be assured that everything is
5 proceeding smoothly and with the great collaborative experience this has been to date.
6

7 Mike Faden,
8 Could I also mention in that context similarly – not exactly the same – Mr. Knapp raised
9 the question last week about how the different agencies would learn about the spot
10 deviations that the law provides. And we neglected to mention this in the packet, but
11 staff did respond by including a sentence on Circle 48 that basically says the regulations
12 have to include a process for notice.
13

14 Council Vice President Knapp,
15 Good. Thank you. I appreciate that.
16

17 Council President Praisner,
18 I hate to introduce this at this point, but last night when I couldn't sleep, I thought of
19 something else.
20

21 Council Vice President Knapp,
22 You read the Road Code. Nice job, Marilyn.
23

24 Councilmember Floreen,
25 We're disturbed about your evening options.
26

27 Council President Praisner,
28 I know. The question is I need a suggestion, Nancy, of where or how this will be taken
29 into consideration. And it is construction and special protection areas. And maybe that is
30 in the context standards or whatever; but I want to make sure in the record of this
31 discussion that as we go forward in special protection areas, that our road designs --
32 including widths and stormwater, but especially widths and other issues – take into
33 consideration the issue of the SPAs in which they exist.
34

35 Mike Faden,
36 I believe that one of the agencies that will be involved in the regulation process is DEP
37 as well as DPWT and DPS.
38

39 Council President Praisner,
40 Okay. But is my comment for the record enough on that issue, or is there someplace –
41 codified or uncoded – that that needs to be made note of?
42

43 Mike Faden,



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1 I think the legislative history you've just created probably is sufficient. There's nothing in
2 the Bill that stops them from –

3
4 Council President Praisner,
5 From taking that into consideration.

6
7 Mike Faden,
8 Right.

9
10 Council President Praisner,
11 Okay.

12
13 Glenn Orlin,
14 And we can include that in the letter that you send –

15
16 Council President Praisner,
17 In my letter. Good.

18
19 Councilmember Floreen,
20 There you go.

21
22 Council President Praisner,
23 Thank you. Okay. I see no other lights – oh, I'm sorry. Mike?

24
25 Council Vice President Knapp,
26 Just one follow-up on that next bullet in "Follow-up" – "a Council resolution defining
27 'urban' areas." It talks about actually trying to get some feedback from the Planning
28 Board. I would just urge that we do that sooner than later because it has significant
29 impact on the Germantown Master Plan and some other activities that we're already
30 seeing are going to crop up in the Growth Policy. And so to the extent that we're going
31 to refine some of those areas on the basis of different transit definitions, I think that's
32 going to be important.

33
34 Glenn Orlin,
35 The planning staff is already working on it. They're working on a schedule with the
36 Planning Board to get this on the Planning Board's agenda. It will come out from them
37 eventually as a draft resolution that will then come to Council review by T&E Council.
38 You may want to have a Public Hearing on it.

39
40
41 Council President Praisner,
42 Well, but it also has context – I want to discuss where and how, because it's broader
43 than that. It has planning issues; it has T&E issues; it also has MFP issues as it relates



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1 to our emerging communities' definitions and the levels of service issues in urban areas.
2 So we need to talk about – we'll talk about that offline.

3
4 Glenn Orlin,
5 Okay.

6
7 Council President Praisner,
8 Okay? Anything else, Mike? All right. There are no other lights. Councilmember Floreen,
9 any closing comment you'd like to make on the legislation? We still have the subdivision
10 reg to go forward with.

11
12 Councilmember Floreen,
13 Well, we're just about done. But as you can see, the full Council's gotten a sense of why
14 this has been a five-year project; and we're not done yet. I thank everyone for their
15 engagement in this. Everyone really does agree – we'll see. They said they all agree.
16 We'll see this in a year, and then we'll see if we really do agree. But I think we're getting
17 closer; and frankly, this is really bringing us in line with a national movement towards
18 making our roadways more community friendly. I thank everyone for their support for
19 this.

20
21 Council President Praisner,
22 Well, I want thank you for your leadership -- and the whole T&E Committee and staff,
23 including and especially Glenn Orlin, for making the first significant cut on this. This is
24 the beginning, as the Committee Chair, Councilmember Floreen, has noted. There's still
25 a lot of work that needs to be done. And there are nine councilmembers who are
26 prepared to take both DPWT and Park and Planning and any other department to the
27 woodshed if this process doesn't move the way we want it to. Council Clerk, please call
28 the role.

29
30 Council Clerk,
31 Ms. Ervin?

32
33 Councilmember Ervin,
34 Yes.

35
36 Council Clerk,
37 Mr. Elrich?

38
39 Councilmember Elrich,
40 Yes.

41
42 Council Clerk,
43 Ms. Floreen?
44 Councilmember Floreen,



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1 Yes.

2
3 Council Clerk,
4 Ms. Trachtenberg?

5
6 Councilmember Trachtenberg,
7 Yes.

8
9 Council Clerk,
10 Mr. Leventhal?

11
12 Councilmember Leventhal,
13 Yes.

14
15 Council Clerk,
16 Mr. Andrews?

17
18 Councilmember Andrews,
19 Yes.

20
21 Council Clerk,
22 Mr. Berliner?

23
24 Councilmember Berliner,
25 Yes.

26
27 Council Clerk,
28 Mr. Knapp?

29
30 Council Vice President Knapp,
31 Yes.

32
33 Council Clerk,
34 Ms. Praisner?

35
36 Council President Praisner,
37 Yes. The legislation passes 9-0. We will now move to Subdivision Regulation
38 Amendment 06-04, Streets and Roads.

39
40 Councilmember Floreen,
41 Thank you, Madame President. This is primarily a follow-up on some of the other details
42 associated with this. You'll note that your issue with respect to road naming has been
43 addressed and included, and I'm sure the T&E Committee is comfortable with that. And



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1 I'll leave it to staff to identify – or councilmembers to ask questions and staff to identify
2 any particular things that are otherwise of concern.

3 Council President Praisner,
4 Any items? Any issues? Mr. Faden.

5
6 Mike Faden,
7 We need to include the Street Name Amendment in what you pass, but we have no
8 issues. This is mostly conforming amendments.

9
10 Council President Praisner,
11 Are there any objections to the amendment on the naming issue? I see no lights, so that
12 is incorporated. This is a roll call as well, as I recall; so, Madame Clerk, call the roll.

13
14 Council Clerk,
15 Ms. Ervin?

16
17 Councilmember Ervin,
18 Yes.

19
20 Council Clerk,
21 Mr. Elrich?

22
23 Councilmember Elrich,
24 Yes.

25
26 Council Clerk,
27 Ms. Floreen?

28
29 Councilmember Floreen,
30 Yes.

31
32 Council Clerk,
33 Mr. Leventhal?

34
35 Councilmember Leventhal,
36 Yes.

37
38 Council Clerk,
39 Mr. Andrews?

40
41 Councilmember Andrews,
42 Yes.

43
44 Council Clerk,



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1 Mr. Berliner?
2
3 Councilmember Berliner,
4 Yes.
5 Council Clerk,
6 Mr. Knapp?
7
8 Council Vice President Knapp,
9 Yes.
10
11 Council Clerk,
12 Ms. Praisner?
13
14 Council President Praisner,
15 Yes. The Subdivision Regulation passes 8-0, with Councilmember Trachtenbeg
16 temporarily absent. We're going to recess now and come back at 1:30. We'll take the
17 Public Hearing and Action; then we'll deal with Zoning Test Amendment 07-04; and then
18 we'll have our worksession on the Water and Sewer System Plan. Note that that's a
19 worksession this afternoon. Thank you all very much. We're in recess.

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1 President Praisner,

2 Good afternoon, ladies and gentlemen. This is the public hearing on a Resolution to
3 amend the FY08 Transportation Fees, Charges and Fares. The resolution will amend
4 parking charges in the North Bethesda Transportation Management District. Action is
5 scheduled following the hearing. Before beginning your presentation, please state your
6 name clearly for the record. There are no speakers so the hearing is closed. Mr. Orlin,
7 we have that item the resolution in front of us. Since we've had significant
8 correspondence in recent days about the issues of parking charges I want to have you
9 be clear about what it is the Council is acting on right now, and if and what changes, if
10 any, there were made in North Bethesda.

11
12 Mr. Orlin,

13 Thank you very much. What we're acting on -- what you're acting on right now is to
14 correct an error that I made. When the Council went through this issue back in May, you
15 made certain decisions about hours and rates in several areas. In North Bethesda -- the
16 North Bethesda TMD you decided not to change the hours at all from what they are.
17 They are currently 7:00 a.m. To 7:00 p.m. Monday through Friday. I by mistake wrote on
18 the resolution, 7:00 a.m. to 7:00 p.m. Monday through Saturday. That is a mistake, and
19 so I've recommended that this go back on the agenda for introduction last weekend
20 before you for public hearing and action today. What I tried to produce here for you was
21 a cleaned up version of the resolution which has the correction on it, which is on Circle
22 4. You'll see under E North Bethesda Transportation Management District the change
23 removing the word Saturday and adding back in the word Friday. I want to point out
24 something else here which is an error, which I want to correct right now. It is on Circle 3;
25 this is actually a change we made back in May but I forgot to take this set of bracketed
26 ones out. In Bethesda under Garage 49, a number 2, you see the short term the first
27 three hours and long term (inaudible).

28
29 President Praisner,

30 Yeah.

31
32 Mr. Orlin,

33 Those are bracketed. Those really came out in the last resolution so they should not
34 appear.

35
36 President Praisner,



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1 In this one?

2
3 Mr. Orlin,

4 In this one. So they will come out (inaudible) already removed those. And that's it.

5
6 President Praisner,

7 Let me just make a couple of comments and be clear to my colleagues. My colleagues
8 are making the action today as it relates to North Bethesda. We're not making any other
9 changes, we're just correcting an error made by the Council as a result of the staff
10 document in front of us at that time, which would have changed the parking hours by
11 including Saturday and that was a drafting error. So the Council's vote today is on the
12 issue of eliminating Saturday from the North Bethesda parking charges hours. That is
13 the only vote that is in front of us today, and it cures an error made by the Council
14 earlier. So your vote is to delete Saturday. That is the only vote we're taking now. I know
15 there are several lights on that are related to the issue because we've all received
16 significant correspondence. And I know Councilmember Ervin has issued a press
17 statement and has some comments as well, and there are several lights. But I actually
18 want to make sure and want to take action on the North Bethesda correction before we
19 get into a broader conversation that folks may want to have for which there is really
20 nothing on the agenda at this point, but I know there is interest. So unless the light is on
21 North Bethesda, we will have the further discussion after we correct the North Bethesda
22 action.

23
24 Councilmember Elrich,

25 Could you clarify something for me?

26
27 President Praisner,

28 Yes, uh-huh.

29
30 Councilmember Elrich,

31 Being new at this, could you explain why we can't without getting to the merits of it, why
32 wouldn't it be proper for us to suggest an amendment about something else instead of
33 what's in front of us?

34
35 President Praisner,

36 Because the only piece of the resolution -- the whole resolution is not in front of us. It is
37 the North Bethesda change. The resolution is there for information but the north -- the --
38 was advertised and the discussion is related to North Bethesda only.

39
40 Mr. Orlin,

41 I think the issue is that the law calls for changes to the resolution to be introduced and
42 then a public hearing be advertised and held. A public hearing for this was very narrowly
43 crafted. It advertised change in the North Bethesda rates, and so the fact that you
44 haven't heard public hearing testimony on anything else. And so the proper way to do it



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1 is, like Ms. Ervin said in her testimony, is to introduce another resolution then we'd
2 schedule a public hearing on that; have a public hearing on that then action, which can
3 happen relatively quickly. I think you want to have an introduction of another resolution
4 next Tuesday.

5
6 Councilmember Ervin,
7 And I'll speak to that in a second.

8
9 President Praisner,
10 Okay. Let's deal with the North Bethesda and then I'm going to allow folks to comment
11 on those other things, but I want to deal with the corrective action so it doesn't get
12 muddled with the other issues. George, you wanted to speak to the corrective action.

13
14 Councilmember Leventhal,
15 Why did we decide to charge them on -- not to charge them on Saturdays in North
16 Bethesda? What I recall from the committee and this does get into the other issue, but
17 I'm just asking about North Bethesda, was part of the rationale for what we did was
18 everyone should be treated equally throughout the County and yet we decided not to
19 charge them on Saturdays in North Bethesda; why?

20
21 Mr. Orlin,
22 Because you decided to charge all the parking districts the same way, and North
23 Bethesda is not a parking district. You decided -- (inaudible) right away from the
24 Department of Public Works that the cost of actually enforcing beyond the hours that
25 are currently enforced -- 7:00 a.m. to 7:00 p.m. Monday through Friday would cost more
26 than any revenue it would receive from extending the hours, and that the -- where the
27 parking is in North Bethesda isn't in a place where there is really any nightlife.

28
29 Councilmember Leventhal,
30 So I'll comment later on the (inaudible) issue.

31
32 President Praisner,
33 Anyone can comment later. I just want to make sure we know what we are acting on,
34 we get that aside, but I will allow conversation on the broader issue and obviously there
35 is nothing before us to act on today, nothing on the agenda. Okay. All in favor of the
36 curative action to eliminate Saturday and make it Monday through Friday as it relates to
37 the North Bethesda Transportation Management District; is there a motion? Okay.
38 Roger, you will move.

39
40 Councilmember Berliner,
41 I will move.

42
43 President Praisner,



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1 All right, and I'll second it. Okay. We have it moved and seconded in front of us. All in
2 favor of the action please indicate by raising your right hand. That is unanimous among
3 those present. Okay. Now the broader conversation, since we've had them and they did
4 get slightly merged, Councilmember Ervin.

5
6 Councilmember Ervin,

7 Thank you, Madam Chair. I know that everybody sitting at this dais has received
8 numerous emails, and in my own district we have received more than 500 emails and a
9 petition from merchants in south Silver Spring and from residents in the Central
10 Business District, and they are all indicating their desire to revert back to the rules that
11 were in effect before this Council unanimously I'll say voted to extend parking hours in
12 Wheaton, Silver Spring, Bethesda and Montgomery Hills. And I understood at the time
13 why the Council decided to do what it did, but subsequently I've had many
14 conversations in my district with restaurant owners and with business owners who have
15 indicated to me that there is a problem especially in south Silver Spring with equity. And
16 that is because there are two parking garages, one located on Wayne Avenue, one on
17 Ellsworth, that are free evenings and on the weekend. And so that creates a problem for
18 the merchants because they are competing with free parking. And it creates an
19 inequitable situation. We have also been hearing from residents who up until this point -
20 - who live in the Central Business District of Silver Spring can park on street for free
21 after I think it is 6:00 p.m. And the extension of these hours are creating problems for
22 people who are having to pay more in rent; they are also having to pay more to park on
23 the street in their neighborhoods. And so I would like to ask staff to bring us a resolution
24 for the Council to act on next Tuesday to -- .

25
26 President Praisner,
27 Valerie, would be introduction.

28
29 Councilmember Ervin,

30 Introduction, I'm sorry; for introduction next Tuesday. Because of what I have put out in
31 a press release and have been in close contact with many businesses in Wheaton
32 especially and Silver Spring, but I'd also would like to recognize that we have two
33 representatives from the Chambers, one from the Silver Spring Chamber and one from
34 the Bethesda Chevy Chase Chamber who are very much in favor of the resolution that
35 I'm proposing. So I really thank you for being here both Jenan and -- and for both of you
36 for being here today because this is really important not only for people who reside and
37 work if my district but I thank -- the T&E Committee I would like to see have a very
38 substantive series of conversations about a couple of things and that is how do we
39 make -- how do we make everything the same across many of these CBD's and these
40 parking lot districts; everything from how we use the whatever the metering system is
41 going to be whether it be are we putting quarters in machines, are we paying on foot,
42 are we paying with the card? I think there is a lot of expectation out there that we're
43 going to be able to resolve this issue. And I'm still mindful of the fact that these parking



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1 lot districts owe money to the general fund. And I think in the T&E Committee I think that
2 should be another conversation that we have about how to make them whole. Thanks.

3
4 President Praisner,
5 I think you mean how to make the County whole.

6
7 Councilmember Ervin,
8 Make the county whole.

9
10 President Praisner,
11 Okay. Right. Thank you. Councilmember Elrich.

12
13 Councilmember Elrich,
14 I (inaudible) concern. I'm glad that you mentioned Wheaton as well in this. I think that
15 this does merit revisiting on our part. That's why I was interested in whether we could
16 revisit it or not today. So you can add me as a cosponsor for next week, for your
17 legislation. And I look forward to the further discussion on this. I do agree that the
18 County ultimately has to be made whole and that's important. But we -- I think we've
19 created a situation in which really put a number of small businesses at a disadvantage
20 to -- you know, particularly in Silver Spring to one project. And one of the benefits of the
21 one project was supposed to be able to help the small businesses through a ripple
22 effect. And it seems to me that, you know, the step we took may have an adverse
23 impact on that. The other thing I'd ask is the, you know, for the Executive staff to
24 consider whether the Silver Spring office gave adequate notice to the small businesses
25 in Silver Spring because when they knew this was going to hit, it took them probably a
26 matter of minutes to get in touch with us. And the universal theme for them seems to
27 have been they didn't know this was coming. And so it seems to me that the Silver
28 Spring CBD people should have notified the small businesses there and to let them
29 know this was coming and given them an opportunity to weigh in. Because we voted for
30 this unanimously because we heard a couple of people raise an issue. I certainly didn't
31 hear anything from Silver Spring or Wheaton at the time it was being proposed.

32
33 President Praisner,
34 Okay. Thank you. Councilmember Leventhal.

35
36 Councilmember Leventhal,
37 I appreciate Valerie Ervin's efforts on this and I thoroughly endorse and support what
38 she's doing. I am not any longer persuaded of the merits of making everything the
39 same. And in fact just now we've enshrined that some parking districts will not be the
40 same; that different parking districts are different; different parking districts have
41 different levels of activity at different times of day and on different days; and that
42 different parking districts have better established evening entertainment and restaurant
43 activities than others. I do remember this discussion in the T&E Committee, what I know
44 we did not appropriately look at in the T&E Committee is what Councilmember Ervin just



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1 raised a few minutes ago; that is the unequal effect of having free parking in (inaudible)
2 and Ellsworth garage vis-à-vis South Silver Spring. If an individual consumer is only
3 going to eat one dinner it does make sense that consequence of having to pay for
4 parking outside of Jackie's or the Gallery will be a disincentive to eat there versus
5 McGinty's or the Taste of Morocco. So it is -- it does have I think a real likely effect. And
6 I think what is important on all of these parking discussions is that we think through the
7 real consequences of what will occur as a result of what we do. I've been really
8 challenged on this issue, not as some have said because the Council will look silly if we
9 repeal what we just acted on. I'm not much worried about that. I think it is a better
10 outcome to do the right thing and to consider the consequences of a public policy
11 decision even if it means changing our minds, which I'm now prepared to do with
12 respect to the parking fees. What I think is important is to really consider the policy
13 consequences of what we do. We've had a lot of discussion just in the last few days.
14 We had a lively discussion last week about how do we make it more expensive to drive
15 in CBD's, and one way to do that is dramatically increase the cost of parking. We've a
16 lengthy discussion just today about how do we balance the interests of transit riders,
17 bicyclists and pedestrians versus those horrible, ugly, terrible automobiles that almost
18 every single one of our constituents uses all the time to get everywhere including all
19 nine of us except one of us who rides a motorcycle.

20
21 Unidentified,
22 Sometimes.

23
24 President Praisner,
25 That's still a vehicle, Mr. Leventhal. Last time I looked it is still a vehicle; it takes
26 gasoline and (inaudible).

27
28 Councilmember Leventhal,
29 And having said that, we have had this discussion about parking at libraries, where
30 again we need to think through the real consequence of what we do. The consequence
31 of providing free parking at at least one library in Bethesda has been that library patrons
32 have not been able to find parking because people have used the free parking to take
33 advantage of the services and amenities and dining and shopping in Bethesda. And so
34 free parking attracts people. Paid park is a disincentive. How do we want to apply the
35 disincentive? How do we want to apply the attraction? And let us think through the
36 consequences of what occurs. If you have free parking adjacent to pay parking, people
37 are going to gravitate to the free parking. And that means the restaurants next to the
38 free parking are going to do better than the restaurants nearby next to the pay parking.
39 That's a consequence we didn't consider when we passed this. If you have free parking
40 that's intended for library users near a bunch of attractive shopping and dining
41 opportunities people are going to use the free parking but they might not use it to go to
42 the library. So I was trying to rationalize my concern over free parking at libraries with
43 my concern over pay parking in South Silver Spring, and I think the answer comes down
44 to what are the real consequences of providing a free good next door to an expensive



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1 good and people will follow and go to the free good. And these are not simple questions
2 to solve. I mean I've been talk to my constituents, as Councilmember Ervin and
3 Councilmember Elrich, and all of us have, and in the abstract down in Takoma Park and
4 Silver Spring, they hate the automobile and they wish that we would tax it out of
5 existence. Until we start to do it -- .

6
7 President Praisner,
8 Councilmember -- Vice President Knapp.

9
10 Vice President Knapp,
11 Thank you, Madam President. I actually just wanted to have my vote recorded in
12 support of resolution to amend FY08 Transportation Fees, Charges and Fares. Thank
13 you.

14
15 President Praisner,
16 Thank you. Councilmember Andrews.

17
18 Councilmember Andrews,
19 Thanks. Well since the issue of free library parking came up, I would simply point out
20 that if our goal is to encourage the maximum use of libraries as Councilmember
21 Leventhal indicated, free parking encourages use. And charged parking for libraries
22 certainly at \$1 an hour, which is what -- was proposed for Rockville, would discourage
23 use. And so you have competing public policies of trying to discourage car use in urban
24 areas versus maximizing the use of libraries, which most people will drive to since
25 libraries serve very, very large areas of service, and Rockville happens to serve the
26 whole county when it comes to special needs, collections and so on. So there are
27 sometimes conflicting public policies. We have to decide which is more important at the
28 time, which one we're going to give priority to. And I think that's reflected in
29 Councilmember Leventhal's comments as well.

30
31 President Praisner,
32 Okay, folks. Let me just be clear that we will have plenty of time for conversation on this
33 issue. This is on the fact that we are introducing or likely to have introduced I think it is a
34 good bet, next week, a resolution that would in some way modify more than just the
35 error made on the North Bethesda item. Let me just make note that that will have an
36 introduction, a public hearing, in all likelihood go to committee, and then come to the
37 Council for full action. So bites at the apple will be many and frequent. Comments on
38 this issue, councilmember Elrich.

39
40 Councilmember Elrich,
41 I was going to take a pass at George's last comment, but I'll pass.

42
43 President Praisner,
44 Oh, please don't; we can -- okay, thank you.



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Unidentified,
(Inaudible)

President Praisner,

Right. For this packet in addition to the resolution, I think it would be important that you resurrect the packet from the Council's action so that we have both the testimony, where we received it, and the information on the revenue issue for the packet; as well as in some question about notice, what notice or what outreach there may or may not have been on this issue. And also information on the difference between Transportation Management Districts and Parking Districts, and also it might be helpful to have a map that shows each of those districts for the T&E Committee's consideration. Although I'm sure the committee chair will have even broader ideas of the information we need to have; so that we can look. It seems also to me that a big issue of this is the placement of garages and the impacts on businesses related to that. So you can have some conversation about that. Okay. I think this is due notice for everyone about the Council's future discussion and consideration on this issue. With that in mind, we are going to move on.

Councilmember Elrich,
(Inaudible) question.

President Praisner,
Yes, go ahead.

Councilmember Elrich,
I figured you were at the table for a reason.

Mr. Holmes,
Well (inaudible).

Councilmember Elrich,
Can you tell us about implementation between now -- .

Mr. Holmes,
Just a very short comment. The County Executive has numerous emails and letters from individuals and from the small businesses, and he would like to see us delay implementation of this resolution, I guess, until we've had time to again look at it and review it.

Unidentified,
You can do North Bethesda.

President Praisner,



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1 Okay, folks, no more lights on this issue unless it just has to be said. Mr. Leventhal.

2
3 Councilmember Leventhal,

4 Yeah, I think there is a lot of public interest in it this. Does the county government have
5 the authority to delay a resolution that the Council has passed, and that the County
6 Executive has signed?

7
8 Unidentified,
9 (Inaudible)

10
11 Mr. Orlin,

12 What happened was when this was brought forward, the rates were in effect as of July
13 1st. but then we knew it was going to take at least a couple months before DPWT could
14 actually go out there and change out the meters. And so the expectation we basically
15 told folks and the public was that the change -- you might see changes anytime happen
16 between July 1st and September, basically labor day.

17
18 Councilmember Leventhal,

19 So would it be accurate to tell our constituents so we can clear all this email out of our
20 inbox that implementation is on hold for now?

21
22 Mr. Orlin,

23 That's the comment I was just mentioning. I don't know if there's a reason to hold up
24 North Bethesda, but in terms of the parking -- .

25
26 Councilmember Leventhal,

27 Right but for Silver Spring and Wheaton -- .

28
29 Mr. Orlin,

30 And Montgomery Hills and Bethesda.

31
32 Councilmember Leventhal,

33 Many concerns have been raised, we're taking a second look, and implementation is on
34 hold for now.

35
36 Glenn Orlin,

37 Right, okay.

38
39 Councilmember Leventhal,

40 There you go.

41
42 President Praisner,

43 Okay, let's move to Zoning Text Amendment 07-04, Accessory Structures Standards.

44 This is the next item that was moved from this morning to this afternoon. The committee



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1 recommends two-to-one approval of ZTA 07-04. There have been significant
2 amendments on this issue. Legislation or zoning text amendment in front of us restricts
3 accessory structures within 200 feet of a national historic park boundary. And it would
4 limit the visual intrusions to the natural setting of such parks in a manner that preserves
5 use of the private property. The committee recommendations are, first of all, relate to
6 the rationale for treating properties along the boundaries of a national park different
7 from properties adjoining other parks, and that relates to the historicity of the resource,
8 meaning the park, the national historic park, resource protection and obvious popularity
9 inherent with a national historic park. We did hear a testimony from those officials with
10 the National Park Service about how popular this park is, and their park
11 superintendent's support for the legislation in front of us. An accessory structure in the
12 rural density transfer zone in essence, that supports farming. We believe doesn't
13 distract the committee, doesn't detract from the historic setting, and in fact is consistent
14 with the historic setting of the national historic park, and therefore the committee did not
15 recommend extending the requirements to the RDT zone. We had significant discussion
16 about the issue of fences, and as initially discussed from the sponsors, we talked about
17 -- and in fact heard testimony during the public hearing about the issue of deer fences.
18 Upon further consideration, the committee -- the sponsors discussed their support for
19 limit on the limited basis adding fences or allowing fences, and we have added three
20 different -- two different types of fences; rustic fences and the deer fence. And I think
21 there is a third, meaning the boundary fences. And there are for the purposes of this
22 zoning text amendment included within the zoning text amendment, descriptions of what
23 those types of fences would be. They appear on Circle 4. Namely a deer fence with
24 specific height limits and style and type; rustic fence which is obviously not as high, it's
25 only four feet high, would be unpainted so it doesn't highlight it as a fence and also
26 defines the way a rustic fence would be constructed; and a boundary fence which in
27 essence just by its terminology relates to the property and the property lines. And the
28 boundary fence is only allowed if a property is located within 100 feet of a park parking
29 lot, in essence associated with a likelihood -- greater likelihood of trespassers given that
30 proximity to the parking lot. We also clarified the issue of accessory uses and accessory
31 structures. This isn't a new issue that's come up before but if -- modified what had been
32 discussed earlier by amending the language to include both of those descriptors. The
33 issue did come up about whether this zoning text amendment is within the scope of
34 county zoning power, and as our staff indicates in the packet, the committee and the
35 Council and the staff concluded that we (A) are not enacting special legislation for the
36 benefit or detriment limit of specific individuals, and although there is only one historic
37 park in the county, the legislation impacts or could impact over 75 privately owned
38 properties according to the Planning Department's data. It also, in our view, does not
39 constitute the taking that it is not unconstitutional therefore because it doesn't constitute
40 a taking, and there is some discussion of how the courts have reviewed that issue. The
41 one issue that came up was the Planning Board's recommendation that this zoning text
42 amendment should apply to all zones, not just the larger zones where one dwelling unit
43 is permitted for every acre, and for every five acres, and whether it should be allowed in
44 the smaller lot zones. As staff in the packet indicates as the committee discussed,



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1 following the Planning Board's recommendation or the planning staff's recommendation
2 to requiring 200-foot setback on property and smaller lot zones would in effect prohibit
3 all accessory structures, and therefore the committee did not recommend including the
4 smaller lot zones within the scope of this ZTA. One could if one wanted to in the future
5 look beyond the zoning text amendment in front of us and craft a setback limit for the
6 smaller zones that is proportionally consistent with the size of those zones and the
7 setback as described here, but that is not before the Council at this time. Again as we
8 talked about the zoning text amendment as introduced amended the land use table to
9 delete the word "uses" and add the word "structures" and the legislation was amended
10 to allow for both accessory building structures and uses to accommodate the concern
11 about amending the zoning ordinance. The one issue -- the other issue -- two issues we
12 discussed were the existing accessory structures and should there be a grandfathering
13 position as far as this zoning text amendment. The committee considered that and did
14 not recommend approval of adding a grandfathering provision. The final issue that came
15 up was one that Committee Member Floreen raised associated with the discretion of the
16 National Park Service and with their scenic easements that may be associated from a
17 National Park Service creation and enforcement perspective. And staff could probably
18 go on further on this issue if Councilmembers are interested, but the view that we
19 considered is that the legal relationship of the easements that the Park Service has
20 versus these that would be created are two separate creations and existence, and the
21 approval of the zoning text amendment does not change a National Park Service
22 easement nor does the creation of the Park Service easement change our easement
23 process, and they are not inconsistent or they do not have a relationship really between
24 the two. So the committee recommendation was not unanimous. It is a 2-1 vote.
25 Councilmember Floreen not supporting the zoning text amendment. I'm going to call on
26 two other members of the committee and then any other Councilmembers. I'll start with
27 Councilmember Floreen who was the descending view.

28
29 Councilmember Floreen,

30 Thank you. My view of zoning text amendments is that at least -- at the very least we
31 should be clear about what the problem is that we're solving. I continue to be unclear
32 about the problem that we're solving insofar as homes -- there are homes we saw
33 pictures of them in the committee work of how -- that are within this easement area. So
34 right today there are some visual conflicts from the -- apparent conflicts from the C&O
35 Canal. I'm a big fan of historic preservation, of the canal and all of the controls that we
36 have been able to put in place to solve conflicts and problems, but I don't see the
37 problem that this is solving. The one complaint I've seen in the past five years about
38 activities on the canal is a letter we got in March from people objecting to Mr.
39 Mardirossian's tree and fence issue. This legislation followed promptly. And in the
40 meantime, and since the legislation was introduced, what I have heard are concerns
41 from folks who live on the canal and have stuff within this area or at least concerns
42 about what they might or might not be able to do. When I view this legislation, it really
43 does override the relationship with the Park Service that has easements. Right now
44 nothing is prohibited. Everything is prohibited within 200 feet of the park land under the



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1 easement. That's actually more demanding than the legislation before us. However, it
2 offers some flexibility. If someone wants to do something within that area, they have to
3 go to Park Service and it is resolved on a case-by-case basis. In that situation the
4 easement also grandfathers, as I understand it, and we looked at that in the committee,
5 structures that are within that easement area. So there is a sensitivity to the particular
6 situation that I think addresses the concern that the community or the Park Service
7 historically has without any controversy since as long as these easements have been in
8 place. This legislation puts us or DPS in the position of overriding that. It says you can
9 have certain things within the easement whether or not the Park Service wants it there.
10 And yet it also says things within the easement area are nonconforming, which means if
11 something happens -- everyone's left so -- if something happens within that area, they
12 can be -- to a gazebo or whatnot, and people have said they have things like that in the
13 easement area, says they can't be replaced. Well so you have an inherent conflict
14 between what's permitted under that easement relationship and what's now addressed
15 through this zoning text amendment. And I just don't think that's fair. There are other
16 people besides Mr. Mardirossian who are affected by this, and I think their concerns are
17 entitled to attention here. And this does not respect their needs. It interferes with that
18 relationship that the Park Service has had in place in an uncontroversial way for 30
19 years or so, and the fact that the Park Service failed to open its mail with respect to Mr.
20 Mardirossian's situation shouldn't seem to me to dominate a land-use decision that
21 affects a variety of other folks who just like to enjoy that land. Absolutely no one is
22 proposing much within that area, but they would like to continue their working
23 relationship with the Park Service. I don't know how that easement can operate with this
24 legislation. It can't because basically it overrides it in every relevant respect. So what
25 the Park Service might have approved is irrelevant if it's not what the DPS is now
26 permitted to approve. And what DPS is pearled to approve may not be what the Park
27 Service supports. So what's the message to the folks who live along here? I have no
28 idea. And so I think it's, particularly given the action of the Planning Board last week,
29 which I believe took care of this issue from some people's perspective, I'm really not
30 sure why we have to legislate on activity on other properties similarly situated but less
31 controversial personalities. That's my view.

32
33 President Praisner,
34 Councilmember Elrich.

35
36 Councilmember Elrich,
37 Just for the record, the first time this issue was brought to me was by the C&O Task
38 Force, and the issue they raised was not in fact the fence along the property. What it
39 concerned about a pump house but that -- the committee itself was convened over a
40 tree cutting on a different property. So this is not (inaudible) of nexus of this particular
41 property owner, it was a series of events which led people to be concerned about the
42 canal and our ability to preserve the canal in the long term -- the view shot of the canal.
43 This includes properties that are not covered by the historic easements. So it's not the
44 case -- whatever the Park Service does have is not the entire length of the canal. And



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1 we wish to try to extend that. At the same time I think this legislation in the cases you
2 raise is sort of a classic example of the perfect being the enemy of the good. I can
3 envision a perfectly pristine park in which there were no structures. It could make it
4 stunningly beautiful. And we could probably concoct a mechanism where, you know,
5 every single-family house would be out of conformance and they would have to take it
6 down at some point. And that might be, you know, perfect in terms of having the perfect
7 viewshed. But it would be such an unacceptable and unpalatable alternative that it
8 would prevent us from being able to do what we can do to protect as much as we can
9 protect right now. The view shed has been -- impinged is the wrong word. Things have
10 occurred along the view shed over a number of years which make it in some places less
11 of an ideal view shed than it otherwise might be. Our goal is to sort of say okay, this is
12 where we are now. It's gone as far as it's gone. Let's not let this thing get any worse.
13 Let's take this treasure -- this rather unique treasure; one of the most highly visited
14 treasures in the country and let's preserve it to the maximum extent that we can provide
15 extra protection. And I view this legislation as providing another measure of extra
16 protection. We have heard from property owners along the canal who have embraced
17 this idea. Not every property owner along the canal has said this is a bad idea. Roger
18 and I have worked for a long time to address a variety of concerns. We met with the
19 folks from the up-county and AG reserve to make sure we address their concerns. They
20 are not opposing this legislation. We have worked and listened to what people have to
21 say to figure out where are the reasonable compromises that need to be made and to
22 come up with something which gives us as much as we can do in a way that I think is
23 practical. And we are trying to be practical. I'm not trying to be ideal. I can imagine like I
24 said -- I can imagine going farther but seems to me that the secret of getting things
25 done up here is not, you know, the limits of my imagination but the limits of getting five
26 votes. And my goal was to, you know, come up with something that provides the most
27 protection and the most people in this Council are willing to go with. And I would rather
28 be able to accomplish that than accomplish less and stand on some abstract principle of
29 what, you know, the ideal situation would be. Also (inaudible) to say my staff member
30 put a lot of work in this, Adrian Gude-Lewis is Gilbert Gude's daughter. I think, you
31 know, I would be remiss not to mention the -- both her involvement in it and that her
32 involvement in it not for the moment but for a long family history that this is a
33 continuation in some way of her father's work. And it was something that frankly dawned
34 on me a little bit later in the process where I began to see it is more than just an
35 environmental concern, but realize what her connection was to the property and to the
36 canal. And that's sort of a unique perspective because of that mind it change, at least, I
37 began to think of it more than just like a land use issue. But what is really this canal
38 about and what's the history behind it? Why is it that it was valued so much that the
39 government chose to take the steps to protect it that it did? And it certainly enlightened
40 my way of thinking about it. And I would like to thank her for her contribution to it and
41 certainly recognize the work that her father did in letting us get to the place where you
42 can even consider the legislation that we are considering today.

43
44 President Praisner,



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1 Councilmember Leventhal.

2
3 Councilmember Leventhal,

4 Thank you, Madam President. I'm going to want to reopen the discussion on
5 grandfathering and see what the will of the Council is, so I'm passing out an amendment
6 here. And so as it is being distributed, I just want to make a couple general comments
7 about the ZTA which I do support and that I want to reopen the issue of grandfathering.
8 First of all I -- all of us can tell stories about how much the tow path and the canal meant
9 to us when I was -- I lived in the late '60s and '70's in Glen Echo Heights just up the
10 way from the canal. I became proficient at riding my bicycle along the tow path. I've
11 spent many, many, many, many hours hiking the tow path, and as an adult, all the way,
12 you know, as far as Cumberland, I don't think I've experienced the entire 186 miles, but
13 I've probably experienced more than two thirds of it. I'm a great lover of the C&O Canal
14 National Historical Park, and I've read about its history. It was surveyed by George
15 Washington, of course, the canal, and we know the story of how it was saved by Justice
16 Douglas. And there have always been abutting properties and there have always been
17 property owners, including accessory structures, leading right up to the river; and there
18 are today there are in-holdings in which people reside still today in the canal historical
19 park. And of course -- and I appreciate that the committee addressed the issue of
20 White's Ferry, which is itself a historical use of the property. And I appreciate that that
21 was taken care of. And I think the committee has made a number of wise judgments
22 here. And I'm really -- I'm okay with whatever the outcome is, whatever the will of the
23 Council is on the amendment that I will offer in just a minute, but I thought it was fair and
24 reasonable to offer it. And just -- the last thing I want to say before I do that, I think Marc
25 Elrich and his office and Roger Berliner and his office have done a really good job here
26 of identifying a real issue, crafting legislation to address it, working with the best known
27 property owner to try and find a reasonable accommodation of his actual and real and
28 reasonable property needs, and I think the solution of a rustic fence is an elegant
29 solution. I think it's well crafted. So I appreciate all the work that has been done here.
30 And as I said on the introduction of this ZTA, there are times when ZTAs are an
31 appropriate policy response. And as much as the Planning Board would like to restrict
32 the Council's ability to offer them as we see fit, indeed the voters elected us and they in-
33 viewed us with certain powers and these are among, and we have identified here I think
34 a timely and well crafted answer which could only be accomplished through a ZTA. So
35 there will be times in the future where it will be suggested that ZTAs are dirty little dogs
36 that are meant to do bad things and that we shouldn't be doing them, and, you know,
37 just here we have them as in our toolbox as one of the ways to address real concerns in
38 the community and this is an example of that. Now let me just talk about this
39 amendment very briefly. This amendment does not affect the primary and most
40 conspicuous property owner who we all have heard about which gave rise to this ZTA. It
41 affects a property owner who I haven't met but whose circumstances have been brought
42 to my attention who owns an existing gazebo; it's not very large; there have never been
43 any complaints about it, but it is made of wood, and over the years it may deteriorate;
44 and the property owner likes his gazebo. And at some point he might want to replace it;



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1 not build anything new or anything larger but these lawn structures sometimes need to
2 be replaced. And this is a long-standing structure which has been on his property for a
3 long period of time. And so noting that the Planning Staff actually recommended that a
4 grandfathering provision for circumstances like these be allowed. The Planning Board
5 didn't go along with that and I understand the PHED committee didn't go along with that.
6 I just wanted to put this before the Council to see what the Council's will is; whatever the
7 Council's will is that will be the decision here. But it simply states that any accessory
8 structure lawfully existing before today and located within the boundaries of this ZTA is
9 a conforming structure and may be repaired or reconstructed; not expanded or new
10 structures built. This doesn't lay the groundwork for any other wrought-iron fences or
11 mansionization or the rest of it, it is just trying to take care of what seems to me
12 legitimate that a property owner who has a relatively minor structure on his property
13 ought not be disadvantaged or have to take it down or not be allowed to replace it as a
14 result of the Council's action here. And I so move and if I get a second, great. And Mr.
15 Knapp is seconding it; so whatever the will of the Council.

16
17 President Praisner,
18 It's been moved by Councilmember Leventhal and seconded by Vice President Knapp.
19 Councilmember Elrich.

20
21 Councilmember Elrich,
22 Could you clarify reconstructed because, I mean, I understand there is an existing
23 gazebo. And my concerns would be much allayed if the limitation was reconstructed as
24 previously built, and not meaning reconstructed and then say built twice as big as the
25 previous one was.

26
27 Councilmember Leventhal,
28 Yeah, I know. Mr. Zyontz drafted this at my request so maybe he could address the
29 wordsmithing.

30
31 Mr. Zyontz,
32 There are a number of standard -- I shouldn't say standard. There's three different ideas
33 going on with grandfathering. This is the most restrictive. Some grandfathering allow
34 enlargement; this specifically does not allow enlargement. Some grandfathering allow
35 modifications; this ZTA does not allow -- this amendment does not allow modifications.

36
37 Councilmember Elrich,
38 I'll accept your amendment as consistent then.

39
40 President Praisner,
41 The -- I have no problem with it either so it is incorporated within the committee's
42 recommendation, if Councilmember Elrich and I agree since we are the majority on the
43 committee that supported the ZTA. Councilmember Berliner.



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1 Councilmember Berliner,
2 I don't believe there are any other -- .

3
4 Councilmember Leventhal,
5 You need to turn your mike on, Roger.

6
7 Councilmember Berliner,
8 Thank you. There are no other amendments pending and I just wanted to express my
9 gratitude to my colleague, Councilmember Elrich, with respect to the way in which we
10 were able to work together and to reach out to the community and to address what we
11 felt were every legitimate concern that was raised with respect to impinging upon
12 people's personal property rights, and to do so in a way that maintained the integrity
13 over our overarching objective, which was to help preserve this beautiful asset that so
14 many of us -- all of us really value. So I feel like it is a very balanced provision, and I just
15 feel that Councilmember Elrich and being the prime sponsor with respect to this,
16 demonstrated a great deal of flexibility and willingness to work with the community to
17 make this work for everybody. So I -- my hat's off to you, sir.

18
19 President Praisner,
20 Council Vice President Knapp.

21
22 Vice President Knapp,
23 Thank you, Madam President. I appreciate the amendment just offered and I appreciate
24 the efforts of my colleagues as it relates to reaching out to other entities and
25 communities as it relates to the AG reserve, White's Ferry; I appreciate my colleagues
26 and the committee and the sponsors. I think that's important. One part that I was -- just
27 as I was going through the packet -- and I'll be honest, I haven't paid much attention to
28 this issue. But the part that struck me and I think it was Ginny Barnes who had testified
29 to this when it came before the public hearing was the large lots versus all lots. And I
30 just -- and I appreciate what was written here. I just struggled with kind of the
31 consistency of the application. I just wanted to get some sense from staff as to kind of
32 how -- or the committee as to how we got to that point, because (inaudible) -- .

33
34 President Praisner,
35 It was introduced with large lot only. And the Planning Board raised the issued of -- or
36 staff -- I can't remember which one -- raised the issue of extending it. I thought it was
37 the Planning Board raised the issue, extending it to all zones. And as my comments
38 earlier the -- and staff and Planning Board whatever, but it came to us from that
39 Planning Board side of the discussion and the concern was 200-foot setback in a
40 smaller lot. Given the way it was introduced would have a significantly -- would perhaps
41 limit dramatically the ability to not only deal with accessory buildings but buildings in
42 general. Or accessory uses. And as I said earlier, I think if folks continue to have this
43 concern, which I believe folks do about this National Historic Park, the solution to
44 dealing with the smaller lots which obviously might not have even thought about it from



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1 the public hearing process, would be to introduce a Zoning Text Amendment that deals
2 with a different setback standard for accessory uses in the smaller lots that would be
3 proportionately consistent but not the same amount of setback. And since it was not
4 advertised for large lot -- for small lots, and the 200-foot setback is not a good number
5 or value from a standpoint of the consistency of impact, the committee did not believe it
6 could deal with that issue at this point in time, but, you know, reserves the right at some
7 point in the future as does every Councilmember or the Planning Board for that matter,
8 in sending over a Zoning Text Amendment that deals with smaller lots should we
9 choose to. So that's the explanation, Mike, of why we are not dealing with it. And in fact,
10 one could argue that we are trying to be specific about the implications by eliminating
11 the RDT zone from consideration, which we did within committee. But expanding it to
12 other zones seemed unfair consideration at this point given what we -- what the public
13 hearing and the discussion was about.

14
15 Vice President Knapp,

16 No that -- then reading through it just, you know, given the intent to limit visual intrusions
17 obviously there are going to be more visual intrusions with a lot of smaller lots than
18 there are with one large lot. And so I just -- it seemed -- there seemed to be an
19 inconsistency there and I just was struggling to reconcile it. So I appreciate the
20 explanation.

21
22 President Praisner,

23 Okay. I see no other lights, unless Councilmember Elrich, your mike is still on, but I
24 assume you just didn't shut it off. Okay. Madam Clerk, call the role please.

25
26 Council Clerk,
27 Ms. Ervin?

28
29 Councilmember Ervin,
30 Yes.

31
32 Council Clerk,
33 Mr. Elrich?

34
35 Councilmember Elrich,
36 Yes.

37
38 Council Clerk,
39 Ms. Floreen?

40
41 Councilmember Floreen,
42 No.

43
44 Council Clerk,



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1 Mr. Leventhal?

2
3 Councilmember Leventhal,
4 Yes.

5
6 Council Clerk,
7 Mr. Andrews?

8
9 Councilmember Andrews,
10 Yes.

11
12 Council Clerk,
13 Mr. Berliner,

14
15 Councilmember Berliner,
16 Yes.

17
18 Council Clerk,
19 Mr. Knapp?

20
21 Vice President Knapp,
22 Yes.

23
24 Council Clerk,
25 Ms. Praisner?

26
27 President Praisner,
28 Yes. The Zoning Text Amendment passes. Councilmember Trachtenberg being absent;
29 Councilmember Floreen voting in the negative; all other Councilmember voting
30 affirmatively. Thank you all very much.

31
32 Mr. Orlin,
33 Just one more question. I will change the opinion to reflect the amendment; if that's
34 okay?

35
36 President Praisner,
37 Yes. Thank you. We are now going to move into a work session on amendments to the
38 10-year Comprehensive Water Supply and Sewage Systems Plan, including water and
39 sewer category changes. My colleagues, this is a work session. The action of the
40 committee's recommendations and any Council changes will take place next week as a
41 consent calendar item. So the item is in front of us, and I will turn the microphone over
42 to the Committee Chair for T&E, Nancy Floreen, and ask folks at the table -- Keith first,
43 for all three of you to introduce yourselves so we have that for the record.



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1 Mr. Levchenko,
2 Keith Levchenko with the Montgomery County Council Staff.

3
4 Mr. Soukup,
5 Alan Soukup, with the Department of Environmental Protection.

6
7 Ms. Nelson,
8 Catherine Nelson representing the Planning Board.

9
10 President Praisner,
11 Thank you. Nancy?

12
13 Councilmember Floreen,
14 Okay. Thank you, Madam President. The T&E Committee basically concurs with the
15 County Executive recommendation for all of these items. There are several issues.
16 There is one issue associated with a proposed church that we concur needs some
17 further information, and I will just tell you generically, I think the committee has some
18 concerns with public health issues associated with a variety of communities which we
19 spent some time in discussing in committee. I'm not sure whether I should proceed in
20 the absence of a quorum here.

21
22 President Praisner,
23 Well, we -- I think you should proceed. This is a working session. If there are issues --
24 let's just go item by item and see if there are any questions.

25
26 Councilmember Floreen,
27 Okay, we'll just go right through and, Keith, can or Alan or Catherine can chime in if I
28 (inaudible).

29
30 President Praisner,
31 If there are any questions.

32
33 Councilmember Floreen,
34 The first item is private institutional facility. This is on page 3. Always a favorite issue
35 with the Council. This has to do with a request by -- the applicant is not the actual
36 church; is it? It is Brianshire.

37
38 Unidentified,
39 It's Brianshire Corporation.

40
41 President Praisner,
42 Now does Brianshire own the property?

43
44 Unidentified,



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1 Yes it does.

2
3 Unidentified,
4 Yes.

5
6 Councilmember Floreen,
7 But they are acting on behalf of the church.

8
9 President Praisner,
10 How can it be a PIF if PIF doesn't own the property?

11
12 Mr. Soukup,
13 It has never been a requirement that the PIF own the property. Previously we had set
14 up an arrangement where the PIF had to be the applicant. And when we went into a
15 process of modifying our regulations to charge an application fee for category changes,
16 that language restricted us to having the property owner be the applicant only. And they
17 have represent (inaudible).

18
19 President Praisner,
20 All right. I appreciate the property owner should be the applicant. I just am surprise --
21 and I guess I personally think that PIF's should be more cautious in acquiring property,
22 but the worry I have is making sure -- twofold; one making sure that the granting of
23 water and sewer should it be granted under a PIF status be clear that the PIF has to
24 own the property when they actually go through this process so that we don't have --
25 reminds me of our discussion about tenants and brokering and dealing with brokers.
26 Somebody getting water and sewer category change under the umbrella that they are
27 going to be a private institution and then selling that value or using that value when
28 you're not really a PIF. So I hope our -- somehow in the regulations you get that
29 assurance. I'm not opposed to the fact -- .

30
31 Keith Levchenko,
32 The resolution does require that the approval is specific to the PIF that's identified.

33
34 Councilmember Floreen,
35 We did discuss that in committee but at this point, the committee wanted some
36 additional information and so did the County Executive. So we recommend that the item
37 be deferred. So we're not making a decision.

38
39 President Praisner,
40 All right, let me just comment that I am really troubled by two -- is this the two-parcel
41 issue?

42
43 Keith Levchenko
44 Yes it is. It's one of the issues, yes.



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1
2 President Praisner,
3 It isn't even contiguous?

4
5 Keith Levchenko,
6 That's one of the issues.

7
8 President Praisner,
9 I'm really troubled by extension of water and sewer to two parcels that aren't even
10 contiguous even under a PIF process. I think there are significant problems when you're
11 coming in with two parcels.

12
13 Keith Levchenko,
14 In it case at least the extension would only serve one parcel.

15
16 President Praisner,
17 I understand that.

18
19 Keith Levchenko,
20 But you're right. We'd have to be clear that -- how both properties would be used.

21
22 Councilmember Floreen,
23 Well, yeah. Again we had that conversation in committee but we're not resolving it as of
24 this moment in time.

25
26 President Praisner,
27 Okay.

28
29 Councilmember Floreen,
30 Number two, basically we are recommend denial. This is one case where there is --
31 there is actually no -- this had to do with Bethel World Outreach Church with a -- being
32 represented by the property owner, and in the meantime the church did pull out from the
33 arrangement and consequently the committee recommended that -- well, everyone was
34 unanimous in recommending that no water and sewer should be extended, yeah.

35
36 President Praisner,
37 There is no right or wrong.

38
39 Unidentified,
40 Right.

41
42 Councilmember Floreen,
43 And plus of course there were master plan issues associated with that.



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1 President Praisner,
2 Okay.

3
4 Councilmember Floreen,
5 Next one is Rhodes application -- that's at the bottom of page 5. This is a property in
6 Damascus. Let's see here. This -- everyone agreed that they should be approved for
7 water for a single hookup. And for now it turns out that there was a house here. There
8 had been some misunderstanding as to whether there was an existing residence, and
9 that there be approval of unrestricted water access conditioned upon Planning Board
10 approval of a preliminary plan that uses the cluster development option in the RC Zone.

11
12 President Praisner,
13 Okay. I see no lights.

14
15 Councilmember Floreen,
16 Number four, again this is a request -- let's see for sewer -- it's a request for sewer;
17 right? At the corner of Baltimore and Georgia Avenue in Olney. It is outside the sewer
18 envelope. And no one supported this. Next one is also in Olney. Again it is outside the
19 sewer envelope -- this is number five, the Ganglof property on Gude Road. It is
20 approved for public water service but there is no recommendation for sewer service.

21
22 President Praisner,
23 Okay.

24
25 Councilmember Floreen,
26 Next one has to do with JDH Properties on Spencerville Road. This is an interesting
27 issue having to do with debates over ownership of land being used by the state for ICC -
28 - .

29
30 President Praisner,
31 Mitigation.

32
33 Councilmember Floreen,
34 Mitigation initiatives and leaving that to the private party seemed to us -- everyone to be
35 the best situation for the time being, and that we would recommend deferring action on
36 public sewer request until a variety of issues are resolved. So we just -- we're not going
37 to get into this one.

38
39 Unidentified,
40 Just one (inaudible).

41
42 President Praisner,
43 This isn't the property that is in itself (inaudible) -- .



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1 Councilmember Floreen,

2
3 No, it's adjacent to it and the issue -- .

4
5 Unidentified,
6 (inaudible) -- .

7
8 President Praisner,
9 (Inaudible) the but if that is the (inaudible).

10
11 Councilmember Floreen,
12 The issue would be how the sewer would be run to this property. And one of the
13 challenges -- there actually was a debate in committee as to what could be done in any
14 event and what the assumptions were. And nonetheless we would recommend deferral
15 of this one.

16
17 Keith Levchenko,
18 Just to clarify also that in this case, we are -- staff is recommending deferral of the water
19 as well although the -- all the reviewing parties were unanimous that water could be
20 approved for this property.

21
22 President Praisner,
23 But you're denying both at this point?

24
25 Keith Levchenko,
26 Well we're deferring both.

27
28 President Praisner,
29 Deferring both at this point.

30
31 Keith Levchenko,
32 It makes sense to wait until the issue plays out.

33
34 President Praisner,
35 Right, until you see both.

36
37 Keith Levchenko,
38 Right.

39
40 President Praisner,
41 Okay.

42
43 Councilmember Floreen,



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1 Next one on page -- bottom of page 7 is Hodgkin's property on (inaudible) House Road
2 in Potomac.

3
4 Keith Levchenko,
5 Councilmember Floreen, just -- we did hear from the applicant that they are seeking to
6 withdraw that request so we -- .

7
8 Councilmember Floreen,
9 Oh, really. On the Hodgkin's one?

10
11 Keith Levchenko,,
12 Correct, uh-huh.

13
14 Councilmember Floreen,
15 So that's (inaudible).

16
17 President Praisner,
18 That's withdrawn. Number 16.

19
20 Councilmember Floreen,
21 Okay. No comment on that. Next one is a collection of -- .

22
23 President Praisner,
24 Seventeen through 24.

25
26 Councilmember Floreen,
27 Yeah, Glen Hill's cases. Again a matter of concern for the committee about seeing a
28 community in various stages of public health issues, some documented, some less
29 evident and basically the recommendations on -- let's see -- on one of them, the first
30 one, the Adams is to approve public sewer for a single hookup only based on a public
31 health issue that's been documented, and for the others to not approve sewer. So that's
32 yes for 17, which is again we are all in agreement and no for 18 through 24.

33
34 President Praisner,
35 So these are denials?

36
37 Keith Levchenko,
38 Right.

39
40 Councilmember Floreen,
41 Yeah. That's right. Again I'll just note I'm not sure if this is the best public policy but this
42 is the best we have so far.

43
44 President Praisner,



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1 Okay.

2
3 Councilmember Floreen,

4 So there we are. And as you know Glen Hills comes back on a pretty regular basis.
5 Next one on page 9, the Piney Branch cases. Let's see here. There are four applicants
6 along an alignment that was previously approved for service. There are some concerns
7 about whether or not -- and then they are there by abutting properties eligible for sewer
8 service. There was some concern about this by, of course, the community -- the
9 Citizens Association, however, the Planning Board did recommend approval and the
10 County Executive and committee agreed.

11
12 President Praisner,

13 But the point here is that they don't get their hookup until the abutting mains are
14 constructed; is that what you're saying?

15
16 Keith Levchenko,
17 That's correct.

18
19 Councilmember Floreen,
20 Yeah.

21
22 President Praisner,

23 Okay. So it still relates to the existing or approved issue but they can't go forward until
24 the rationale is there. Okay. Potomac Master Plan (inaudible).

25
26 Councilmember Floreen,

27 Okay, again, we still can't agree on what peripheral means. This is the Potomac Master
28 Plan Peripheral Sewer policy that was identified in the Potomac Master Plan as one to
29 be studied after the Potomac Master Plan. Of course it hasn't been studied yet and I
30 know Mr. Soukup is hot on the trail of getting that study underway. But in the meantime
31 he leaves this to us to resolve which we are of course happy to do. So the first one, the
32 Big R application is -- there's concurrence to approve sewer for that property between
33 the different parties and with direction as to where the extension must be. The next one
34 is Mohebi family. In this case, extension required to serve the property would need to
35 cross a tributary Muddy Branch close to River Road and is not consistent with a
36 peripheral sewer policy. There is some indication that the septic system has started to
37 fail, hasn't been documented to DPS's satisfaction at this point, and we discussed the
38 fact that this may be a candidate for an innovative system along the lines of the famous
39 San (inaudible) alternative or something else in that category. The drip -- is this the one
40 with the drip?

41
42 Mr. Soukup,

43 Possibility of a drip irrigation system. Stand-out systems are no longer innovative
44 despite -- despite many people's wishes.



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Councilmember Floreen,

That is a little editorial comment on my part. These issues -- what's best for the environment? That's the real question. And apparently we can't quite agree. Finally, there is the Saxsema application. This apparently -- there was a mistake according to some parties at least in the Potomac Master Plan as to what the extent -- who had service already in the Potomac area. Mr. -- the Saxsema applicants demonstrated that there had been in fact service to the adjacent property and has been able and apparently staff has concurred that this was somehow missed in the work that was done in that environment. And the County Executive's, Council staff and committee recommend that this particular request does not involve the interpretive issues that other people associate with this peripheral policy issue. Parenthetically, none of the committee members were here when that policy was established so we're trying to figure it out as we go along. But in any event based on the County Executive's staff's view and Keith's view, the committee recommended approval with the condition upon the evidence of an easement to achieve access to the sewer that is next door.

President Praisner,

How long are we going to go on like this?

Mr. Soukup,

We are -- .

Councilmember Floreen,

Until we do the study.

Mr. Soukup,

We are working to incorporate a discussion of the Peripheral Service Policy and the update of the water and sewer plan that we hope to have out by the end of the summer.

President Praisner,

So it would be in the -- .

Mr. Soukup,

We would incorporate into chapter one of the plan.

President Praisner,

Okay. And we can look forward to seeing it in the fall.

Mr. Soukup,

Right. It may have bloodstains on it but ignore that fact.

President Praisner,



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1 Well, if it doesn't have bloodstains when it comes over, it probably will by the time we're
2 done.

3
4 Councilmember Andrews,
5 Is that Glen Hills?

6
7 President Praisner,
8 It's the Potomac Master Plan in general issue and Peripheral Sewer Policies in general.
9 Okay, we're to Poolesville.

10
11 Councilmember Floreen,
12 They have their unique -- I respect the people of Potomac for having its unique set of
13 standards including the fact that we're not going to (inaudible).

14
15 President Praisner,
16 (Inaudible) I know. There is all kind of reasons why some of us didn't vote for the
17 Potomac Master Plan.

18
19 Councilmember Floreen,
20 Well there you go. There you go. There are several requests in the town of Poolesville. I
21 think this has been dealt with -- with the town of Poolesville and all the parties concur
22 with the decision to approve water and sewer. Next one is the town of Laytonsville.
23 There is a public water service request. We had -- they were here for the public hearing
24 and there is a piece of property in Laytonsville that this approval explicitly excludes so
25 that the towns -- and everyone is in agreement with that. The town has otherwise
26 requested water changes -- water category changes here. It would not go to the land
27 zoned AG under Laytonsville land use law. But otherwise would be permitted. And that
28 we all agree on that.

29
30 President Praisner,
31 Okay. Council Vice President Knapp.

32
33 Vice President Knapp,
34 Thank you, Madam President. Madam Chair, I just wanted check with you say we are
35 all in agreement; was the town of Laytonsville also in agreement when -- in the we all?

36
37 Councilmember Floreen,
38 Yeah.

39
40 Mr. Soukup,
41 Yes, they did.

42
43 Vice President Knapp,
44 Good, okay, I just wanted to make sure it is consistent.



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1
2 Councilmember Floreen,
3 Next time you may want to join us at our (inaudible).

4
5 Vice President Knapp,
6 Well I've joined a couple this is just one of the few I've missed. I enjoy participating in
7 the water and sewer category change hearings so much.

8
9 Councilmember Floreen,
10 This is all about -- it's all about the (inaudible).

11
12 Councilmember Elrich,
13 They are the best hearings we do?

14
15 Vice President Knapp,
16 They are. They're close.

17
18 Councilmember Leventhal,
19 We actually have a mechanism.

20
21 President Praisner,
22 Councilmember Leventhal.

23
24 Councilmember Leventhal,
25 May I?

26
27 President Praisner,
28 Go ahead, yes.

29
30 Councilmember Leventhal,
31 Where things are clearly before a single committee then at the option of the committee
32 chair and the Council President, you can have a hearing just in that committee. So just -
33 - for the benefit in case anyone is watching, you know, the Council Vice President didn't
34 miss any assigned duties here. He's not a member of the T&E Committee. The hearing
35 was before the T&E Committee. But it was at that hearing that Mayor (inaudible) -- .

36
37 Vice President Knapp,
38 I had spoken with the Mayor and I knew there were a couple questions. I thought it was
39 just the technical correction that needed to be made. So I thought everything was
40 consistent. And I just wanted to clarify that.

41
42 President Praisner,
43 If you're mayor in Laytonville, you have to be named Charles.



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1 Vice President Knapp,
2 You do.

3
4 Unidentified,
5 Yeah, the technical corrections -- .

6
7 Vice President Knapp,
8 (Inaudible) Laytonsville for the last 50 years, so it's pretty easy.

9
10 Keith Levchenko,
11 Yeah, the technical questions he had were noted and we've made corrections that will
12 show up in the resolution.

13
14 Vice President Knapp,
15 Thank you.

16
17 President Praisner,
18 Okay.

19
20 Mr. Soukup,
21 We have discussed the one change that we had proposed with the Mayor and his
22 representatives, and they were fine with that.

23
24 Vice President Knapp,
25 Okay. I thought it was consistent with the conversations I had.

26
27 President Praisner,
28 I need you to explain something to me though as I read the packet and unfortunately I
29 was out of town or I would have been at the public hearing, but I know my staff was. In
30 the rezoning and the rezoning to -- rezoning of county agriculturally zoned land by
31 incorporation within the town, I thought when we discussed extension of water and
32 sewer in Laytonsville and near Laytonsville, especially associated with the landfill, that
33 we were explicit about not extending water and sewer to areas of the town that were
34 beyond the boundaries of the town at that time. So are we changing something here?

35
36 Keith Levchenko,
37 Not here. The town did incorporate some additional land but that land is still zoned AG
38 under their own planning policies, and it is not presumed to be served under this.

39
40 Unidentified,
41 (Inaudible).

42
43 Keith Levchenko,



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1 The one issue of the change that Alan referenced was within the town there is a
2 property that was zoned agricultural back when the Council took this up in 2001, so it
3 was not presumed to be served then; however subsequent to that point it has been
4 rezoned within the town to a residential zone. And within this the town is presuming to
5 have that served by water within the town.

6
7 Vice President Knapp,

8 It was within the town and remained within the town, they just rezoned the land that was
9 there previously.

10
11 Mr. Soukup,

12 Right. It was within the town in 2001 when we looked at this before.

13
14 President Praisner,

15 Okay.

16
17 Unidentified,

18 That's the substantive change.

19
20 President Praisner,

21 I want to be clear that I think the Executive's staff's interpretation of state law is not
22 correct. And I believe in the conversations we had about smart growth with the
23 Glendenning administration and in subsequent conversations; and I'm speaking we
24 meaning the Maryland Association of Counties, that the issue of state law is vague and
25 that the Council does have broader authority than I think the Executive staff is
26 interpreting at this point. We do not have to -- we can comment or restrict especially
27 when we're talking about properties that are annexed through the annexation process
28 but even beyond that the whole issue of the Green Fund and all of the issues about
29 reviewing water and sewer category changes or reviewing water and sewer, I believe
30 the County can be more restrictive and that we have the authority to do so. Even
31 including in the review of municipal -- especially when we're talking about a municipal
32 land that did not exist as municipal land when we talked about water and sewer issues.
33 So I think we need to -- I'm happy that we're continuing to go protect the RDT zone
34 whether it is inside or outside the town. They may have zoned it AG; they can change
35 the zoning of AG, but the question of extension of water or sewer is still ours, I believe.
36 So I just want to make that point because we have extensive conversations about the
37 issue of water and sewer.

38
39 Keith Levchenko,

40 Well the law in question is about one sentence long.

41
42 President Praisner,

43 I know.



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1 Keith Levchenko,
2 And it couldn't be anymore vague than that.

3
4 President Praisner,
5 Right, it is vague. But I do think in the conversations that we've had that there is
6 stronger Council role -- County role in this issue. Okay, let's move to the last item.

7
8 Councilmember Floreen,
9 Okay. This takes us further -- a little north, well west of Laytonsville over to Clarksburg.
10 This is a recommendation by the County Executive to establish a public health problem
11 area and approve water for properties in this area. There are about 30 properties
12 surveyed; 14 were found to have moderate or high level of health concerns and are
13 recommended to be in the problem area. And the designation would make these
14 generally one-to-two-acre RDT zoned properties eligible for public service. One of the
15 properties -- and we saw this last year was the Clarksburg Church of God. They've
16 requested a water category change as well, and you may recall we deferred that
17 previously. This will allow the church to obtain water. It does not address sewer. These
18 issues will have -- the issues with respect to sewer will need to be looked at at a later
19 date. So the collective recommendation again for -- I think it's all the parties; right?

20
21 President Praisner,
22 Uh-huh.

23
24 Councilmember Floreen,
25 Is to designate this as a public health problem area for the purposes of access to water.

26
27 Keith Levchenko,
28 The only slight change staff recommended was being -- was not making a decision on
29 the sewer designation at this point.

30
31 Councilmember Floreen,
32 Yeah.

33
34 Keith Levchenko,
35 The Executive recommendation it presumed at six but we did hear some testimony from
36 community members concerned about the septic as well, and so we felt let's just wait
37 until we had more information on that piece of it, and just focus on the water piece for
38 this.

39
40 President Praisner,
41 So it is granting the water and deferring any consideration on the sewer.

42
43 Mr. Soukup,



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1 We didn't want to make it look like the Council was confirming category 6 even though
2 the amendment really didn't address it.

3
4 Councilmember Floreen,
5 Yeah.

6
7 Mr. Soukup,
8 So we'll just put it on hold. And I've already spoken with the well and septic office; they
9 understand we are going to go back and look at that again.

10
11 Councilmember Floreen,
12 All right. And let me just point out for the benefit of the folks not on the T&E Committee;
13 we heard -- we did have a session on another neighborhood in Germantown which has
14 real septic issues and real financial issues associated with that. Our policy requires folks
15 to absorb the cost of connection which for families of moderate means is really beyond
16 their reach. So that's another issue that we will continue to worry about. I'm not sure that
17 anyone has an easy solution to that. But a real genuine issue appears to be in the
18 Clarksburg area.

19
20 President Praisner,
21 Vice President Knapp.

22
23 Vice President Knapp,
24 Thank you, Madam President. And I appreciate the committee's efforts Clarksburg
25 Church of God is kind of one of those issues that is interesting in that when you talk
26 about being right on the line of the RDT they are literally within five feet of the line and
27 will fall into the issue that the rest of the neighborhood is as it relates to water. And so I
28 appreciate the committee's recommendation. A question for Alan as it relates to just
29 continuing to monitor the sewer issues within that rest of that community; as I
30 understand there are a couple septic systems that have already failed. And to the extent
31 that we continue -- we take these up on a very periodic basis, that this category
32 changes and so they may come back. We may not see anything for a couple years and
33 yet septic systems may fail much sooner than that.

34
35 Mr. Soukup,
36 Until now, the Well and Septic Office has advised us that any failed systems that have
37 occurred in this area of Clarksburg Road had been repaired with an onsite repair.
38 They've not required public sewer. Now at least one of those properties is on its last
39 field, and it's been on its last field for several years. When that one fails, they either
40 have to go to an innovative system or holding tank if we don't have public sewer there.
41 So we're going to look at this again. There is a concern about the size of these smaller
42 properties at the lower end of the street. They are in the 6/10th of an acre range most of
43 them, which really limits what we can do with well and -- with water and sewer -- well
44 and septic, but what people can do with the property as a whole. I was advised that



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1 because public water is now available on the street, one of the vacant lots has qualified
2 for a septic system that meets current standards. So the water helps us with some
3 additional flexibility in citing septic systems. It is probably not a cure-all. And given what
4 we have seen in some other neighborhoods, Toon Avenue in Damascus and some of
5 the smaller neighborhoods that we looked at, in the Damascus Master Plan, it's giving
6 us some guidance on what we need to look for; what the danger signs are when we
7 start looking at these smaller, older neighborhoods.

8
9 Vice President Knapp,

10 Okay. I guess what I would urge us to do is -- we'll do I'm guessing another one of these
11 probably another 18 to 24 months has been roughly the cycle in which we've our
12 category changes.

13
14 President Praisner,
15 (Inaudible)

16
17 Mr. Soukup,
18 About once a year.

19
20 President Praisner,
21 Once a year; sometimes twice a year.

22
23 Keith Levchenko,
24 It was as often as twice a year for a while.

25
26 Vice President Knapp,
27 It was but we haven't done it that often in the last four years.

28
29 Keith Levchenko,
30 It has been once a year for the last several years.

31
32 Vice President Knapp,
33 But anyway to the extent that before we do the next one, if we could continue to monitor
34 and make sure if there are failing septic systems that we kind of roll them in here if we
35 need to.

36
37 Mr. Soukup,
38 Right. We -- DEP has the authority to direct the WSSC to provide public water and/or
39 sewer service in the event of a failure. Now we address one failure at a time. To identify
40 a large area or a substantial area of the county as a general public health problem area
41 requires your action. But we can go ahead address that. We did with these properties.
42 The water line is already in place and serving properties in the neighborhood.

43
44 Vice President Knapp,



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1 Right. Okay. And I just would like to thank the committee for hearing the issues as it
2 relates to Green Ridge Estates. As I think my colleagues are aware, there are a number
3 of properties that -- or a number of communities that were developed before water and
4 sewer had been extended. Now that you have development that has occurred around
5 them, there are little pockets of 50, 60, 100 homes that are all on well and septic. And
6 I'm assuming Ms. Praisner has many similar issues as well.

7
8 President Praisner,
9 No, not really. Not as many.

10
11 Vice President Knapp,
12 And so there are a number of these little pockets that we're starting to see failings.

13
14 President Praisner,
15 I have PIF's.

16
17 Vice President Knapp,
18 We are starting to see the (inaudible) failing septic systems. And it isn't significant policy
19 issue that we need to think about but there are no easy answers. And so I appreciate
20 the committee looking into this because it is a significant financial burden for the
21 communities to try and figure out what to do next.

22
23 Councilmember Floreen,
24 Yeah, it's a big problem in -- it turns out that changes in state law several years ago
25 have made it even harder to address, so we'll chew that over.

26
27 Vice President Knapp,
28 There's probably ten other communities of similar size that are kind of stuck in the same
29 situation.

30
31 Councilmember Floreen,
32 Yeah, I think it is going to come around and bite us in the back.

33
34 Mr. Soukup,
35 It is probably the wave of the future.

36
37 President Praisner,
38 Well, if I can just build on that before I call on Councilmember Leventhal; I think it would
39 be helpful at some point for us to just get some information as to what other jurisdictions
40 do or don't do and other than Queen Anne County -- that can, you know, what kind of
41 solutions and approaches from water and sewer policy perspective and from a failing
42 septic perspective -- what options there may be, innovative or otherwise. And how you
43 ensure that you aren't perhaps -- you know broader options than just the extension of
44 water and sewer (inaudible) options.



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Councilmember Floreen,

And let me just point out we did get some correspondence already from engineers who are expressing -- well very deep concern about what we are doing to the ground water and the water table based on some of our septic -- anti-sewer policies in certain parts of the community. So it is a real balancing act in terms of our zoning and then our water and sewer policy, and how those things connect when you're dealing with the close proximity of important streams and wells. So there you go.

President Praisner,
Councilmember Leventhal.

Councilmember Leventhal,

I know we are about to close and I don't want to delay the Council I just wanted to make a couple of quick comments. The first is for the benefit of those colleagues who joined the Council most recently. This exercise that we go through is n -- I can't think of any more direct application of our power to grant or not grant or award or not award specific tangible results to constituent. I can't think of anything else that we do that has immediate, right away, real effect on people's lives as the exercise of our discretion on whether or not people get a water or sewer category change. It took me a couple of years to understand how this works because the material is in very small type and, you know, it is not always easy to follow when you have the witnesses. I keep reminding our staff call out the page number that the witness is referring to so that we can look at the map, we can understand the zone, and keeps getting better at it. We're still working with him on that. It is not easy to keep track of, but as I've started to understand it better and particularly through the really profoundly significant debate we had over water and sewer hookups for religious institutions in the agricultural zone a couple of years ago which may have been one of the most significant policies judgments made by the last Council, and I cite it because it was very controversial. It was against stiff opposition, and it was a major step in support of preserving our agricultural reserve. I've come to understand these issues much better. And so I just wanted to highlight a couple of things that had already been alluded to but particularly for the benefit of our newer colleagues. Number one, with respect to the Clarksburg Church of God; this church is not proposing to expand its current facility and -- and this is another important policy issue here. What we did when we banned water and sewer hookups for religious institutions in the RDT zone was we decided that we would treat those religious institutions the same. Not differently. This is important to other decisions we are going to be making soon. We had already decided that we would not provide new water and sewer hookups in the AG zone for everyone else other than religious institutions. And the question had always been whether we could or should impose such a restriction on religious institutions and we decided to do it. So what we did was not set a higher threshold for religious institutions, we just said that religious institutions would not be treated more liberally than others. So here what we're saying for the Clarksburg Church of God, even though it is a religious institution and it is in the RDT zone, is that based



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1 on the finding by DEP that a public health emergency exists due to the due to the well
2 failures that the church should be treated the same as the other properties; not
3 differently, not worse, not better. I wanted to make that point. Secondly, the point that
4 the Chair makes about the impending -- and the Vice President makes about the
5 impendency of septic failures in lots and lots of little homes. Probably in every district
6 but mostly in districts 1 and 2 are going to be things that -- it's looming on the horizon
7 and we don't have an answer to it yet. But it's of great concern to constituents again,
8 probably and mostly in those two districts.

9
10 President Praisner,

11 And I guess I would add from a district 4 perspective the concern is both the explosion
12 or extension of water and sewer, both with rural cluster development and the
13 implications of that in places where it has been master planned. And the other concern
14 is the extension of water and sewer for PIF's where the master plan explicitly says no
15 water and sewer. And the goal of requiring in the purchase of property to have folks
16 know when they buy property what the master plan says as far as water and sewer is to
17 inform everyone including religious institutions that they should look at the water and
18 sewer envelope before they make a judgment about purchase. Because from my
19 perspective there are areas in master plans where the goal was no water and sewer,
20 and the fear is that the inclusion of a PIF water and sewer is changing the potential
21 implications of water and sewer in areas where they weren't intended. So that's the
22 issue that raises from district 4. Councilmember Leventhal, I'm just talking about treating
23 everyone equally.

24
25 Councilmember Leventhal,

26 Okay well (inaudible). I would point out, and I do understand the Council President's
27 view, and I am well aware since I also represent district 4 that there are some of those
28 concerns. The Council as a whole, not unanimously, has made some decisions with
29 respect to citing of religious institutions outside of the RDT zone, and I do think that we
30 need to be aware of precedence also. So there are issues now with respect to religious
31 institutions that might reasonably look at decisions made by this Council and that might
32 therefore assume that that might open the door to similar decisions in the future. And
33 that is an assumption that is worth considering. So there are differences in this points of
34 view about what should be allowed where and this Council firmly said that we would
35 protect the RDT zone from encroachment with respect to other less dense zones. I don't
36 think we have unanimity on the Council.

37
38 President Praisner,

39 No my only point is that the master plans are very clear about water and -- where water
40 and sewer is to go, and I'm also very clear that there are rural functions including farm
41 occurring in other than the AG reserve. And there are folks who are concerned about
42 the encroachment of development and its impact on those issues. And I don't think we
43 have ever said at this point that farming cannot occur anywhere else in the county, and
44 nor do our policies make that point.



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1
2 Councilmember Leventhal,
3 Nor did we say that praying could not occur anywhere.

4
5 President Praisner,
6 Exactly. And doesn't have (inaudible).

7
8 Councilmember Floreen,
9 Regardless -- .

10
11 President Praisner,
12 And doesn't have to have water and sewer.

13
14 Councilmember Leventhal,
15 And we know that farmers often have to pray in order to (inaudible).

16
17 Councilmember Floreen,
18 If I could just -- just say -- I just wanted to highlight based on our conversations with the
19 Greenrich community, and as you're seeing increasingly the public health issues both to
20 the home owners and to the environment are ones that we're going to have to keep a
21 close eye on. So I would ask that weighing those debates planning staff and DEP staff
22 keep an eye on that in the master plan after its set that come alone because it looks like
23 we're going to pay now, we're going to pay later. So there you have it.

24
25 President Praisner,
26 The master plans that we're going to have before the Council I don't think it relates to
27 this issue.

28
29 Mr. Soukup,
30 We've dealt with most of them unfortunately.

31
32 President Praisner,
33 We're adjourned, thank you.